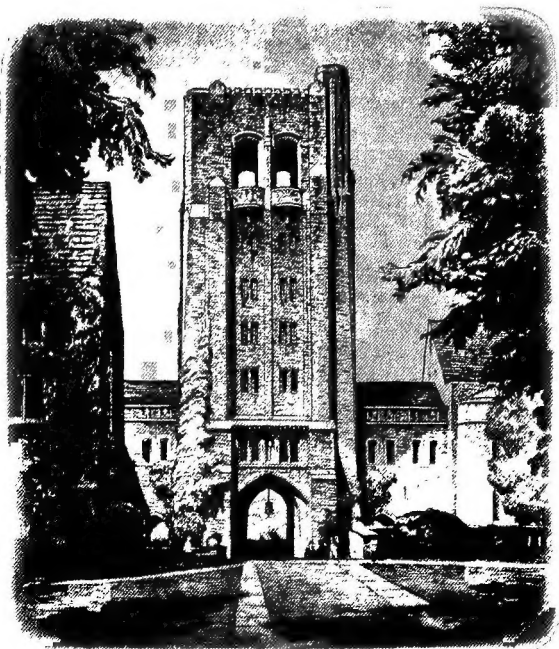




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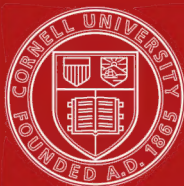


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WORKS

OF

SAMUEL WARREN

D. C. L. F. R. S.

VOL. V.

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON
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MISCELLANIES

CRITICAL, IMAGINATIVE, AND JURIDICAL

CONTRIBUTED TO BLACKWOOD'S MAGAZINE

BY

SAMUEL WARREN

D.C.L. F.R.S.

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON
MDCCCLV

TO

A Venerable Father,

THE REV. SAMUEL WARREN, LL.D.,

INCUMBENT OF ALL SOULS', ANCOATS, MANCHESTER,

THIS VOLUME

IS RESPECTFULLY INSCRIBED

BY

An Affectionate Son.

INNER TEMPLE, *December* 1854.

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P R E F A C E.

THIS volume contains such of the Author's contributions to *Blackwood's Magazine*, as appeared to deal with subjects of general, intrinsic, and permanent interest and importance. Most of them were originally written with a view to subsequent separate publication ; and some have cost the Author great pains, alike in the writing and revision.

The paper, however, entitled "The Mystery of Murder, and its Defence," did not appear in *Blackwood's Magazine*, but in the quarterly *Law Review*, and is included in these "Miscellanies," for reasons stated in a note subjoined to the commencement of the paper.

The short prize poem, entitled "The Martyr Patriots," is here inserted, principally from the Author's desire to indicate his early connection with the ancient and distinguished University of Edinburgh, towards which he entertains feelings of great respect.

The last article in this collection, entitled "A Few Personal Recollections of Christopher North," is a brief unstudied tribute of affection and admiration for the character and genius of Professor Wilson. It was written originally for these "Miscellanies" ; but, at Messrs Blackwood's request, also appears in the number of *Blackwood's Magazine* for December 1854. It has been suggested to the Author, with reference to an allusion made, in a note to that paper, to a letter received by him from Sir Walter Scott, that the reader might be pleased to see the entire letter : which is therefore here given, as an evidence of the extraordinary good-nature and condescension of that great writer to

an unknown correspondent, a mere boy—scarcely entered upon his seventeenth year. He had, at that early period, nearly completed, in secret, a work for the press ; and, in a sudden fit of that enthusiasm with which the author of “Waverley” inspired so many of his myriad readers, actually presumed to write to him, giving an outline of the proposed undertaking, and asking the great man’s advice how to set about publishing ! Hoping that his intrusion in so doing may be deemed, in some degree, atoned for, by giving the public so interesting an evidence of the then Great Unknown’s good-natured counsels to an unknown youthful literary aspirant, here is a *verbatim* copy of the letter in question :—

“ABBOTSFORD, 3d August [1823].

“SIR,—I am favoured with your letter of the 26th ult., which some business prevented my sooner replying to. I am not the author of those novels which the world chooses to ascribe to me, and am therefore unworthy of the praises due to that individual, whoever he may prove to be. It is needless, therefore, to add, that I cannot be useful to you in the way you propose. Indeed, if you will take my advice, you will seek no other person’s judgment or countenance on the project of publishing which you entertain, than that of an intelligent bookseller, who is in a good line in the trade. Although no great readers, nor pretending to particular taste, these gentlemen, whose profession it is to cater for the public, acquire much more accurate knowledge of what will give satisfaction to the general reader, than can be obtained by a man of letters in his closet. They have also ready access to good judges, and their own interest peremptorily commands them to give as much encouragement as possible to genius, or anything approaching it.

“Excuse these hints from one who has had some experience, and believe me, Sir, your most obedient servant,

“WALTER SCOTT.

“SAMUEL WARREN, Esq.”

INNER TEMPLE, LONDON,
1st December 1854.

MISCELLANIES.

THE BRACELETS.

A TALE.*

[THE ensuing sketch was written when the author was of very youthful age. It was the first communication he ever sent to *Blackwood's Magazine*.]

It was late on the evening of a gloomy and bitter day in December, about the middle of the seventeenth century, that Carl Koëcker, a student of Goettingen University, having sipped his last cup of coffee, was sitting thoughtfully in his room, with his feet crossed and resting on the fender of his little fireplace. His eyes were fixed on the fire, which crackled and blazed briskly, throwing a cheerful lustre over his snug study. All the tools of scholar-craft lay about him. On a table by his side lay open various volumes of classic and metaphysical lore, which showed evident marks of service, being respectably thumbed and fingered; sundry note-books, filled with memoranda of the day's studies, and a case of mathematical instruments. Two sides of the chamber were lined with well-filled bookshelves; on one side was the window, and the corresponding one bore a dusky picture of Martin Luther. All was silent as the most studious German could desire; for the stillness

was, so to speak, but enhanced by the whispered tickings of an old-fashioned family watch, suspended over the mantel-piece. As for Carl himself, he was of goodly look and stature. His shirt-neck lay open, with the spotless collar turned down on each side; his right hand lay in his bosom, and his left, leaning on the table, supported his learning-laden head; for learned he certainly was, after the fashion of that day. His brow was furrowed with thoughtful anxiety, which, together with his sallow features and long black mustaches, gave him the appearance of an older man than he really was. As for his thoughts, it were difficult to say whether, at the moment when he is presented to the reader, they were occupied by the mysterious pneumatological speculations of Dr Von Dunder Profondant, which Carl had been attempting to comprehend in the morning's lecture; whether his fancy was revelling in recollections of the romantic splendours of last night's opera, or whether

* The subtle schemes resorted to by the Inquisition for the detection and seizure of its victims, even in places remote from the seat of its central authority, and supposed to be far beyond their jurisdiction, are too well known for an intelligent reader to charge any portions of the ensuing narrative with improbability or exaggeration. In a word—all that the wit and power of devils can devise and execute may well-nigh be believed of the members of that horrible institution.

they were fixed, with painful interest, on the facts of a sudden and secret seizure made that day in Goettingen by the terrible myrmidons of the Inquisition, on the double charge of heresy and sorcery. The frightful tribunal alluded to was then in the plenitude of its power, and its mysterious and ferocious doings were exciting nearly as much indignation as they had long occasioned consternation. Carl was of a very speculative abstract turn, and having been early initiated into the gloomy depths of transcendentalism, had begun latterly to turn his thoughts towards the occult sciences.

About the period when this narrative commences, it was generally understood that a professor of the Art Diabolic had visited the principal places of Germany, and was supposed to have made several converts among the learned, as well as to have founded secret schools for teaching the principles of his infernal science. The lynx-eyed Inquisition soon searched him out, and the unfortunate professor of magic suddenly disappeared, without ever again being heard of. The present object of those holy censors of mankind, the principals of the Inquisition, was to discover the schools he had founded, and the disciples attending them. Several of the leading students at Goettingen had fallen under suspicion, and Carl Koëcker, it was said, among the number. He was astute enough, however, to avoid any plausible pretext for offence, by saying little—and even that little he took care should be in disparagement of the detestable doctrines in question.

Carl had just set down his coffee-pot on the hob, after an abortive effort to extract another cup from it, and was stirring together the glowing embers of his fire, when he was startled by a loud knocking at his door. It is not asserted that the sound caused him to change colour, but that he heard it with a little trepidation, is undeniable. Who, on earth, could be wanting him?

Rap, rap, rap!—Rap, rap, rap!

Carl gently laid down the poker,

but did not move from his seat. He listened—his heart beat quick and hard, it seemed evident that the obstreperous applicant for admission was resolved on effecting his purpose one way or another; for, in a few seconds, the door was shaken, and with some violence. Carl, almost fancying he had been dreaming, started from his seat, and cast an alarmed eye towards the scene of such unseemly interruptions. Ay—the door was really, visibly shaken, and that, too, very impetuously. Who could it be—and what the matter? Was it one of his creditors? He did not owe five pounds in the world. A fellow-student? The hour was too late—and Carl, besides, of such a reserved, unsocial turn, as to have scarce one acquaintance at College on visiting terms. A thief?—He would surely effect his entrance more quietly. Were some of his relatives come to Goettingen? was any member of his family ill? was it merely drunken Jans, the janitor?—Who—who could it be? thought the startled student.

Rap, rap, rap, rap!—Rap, rap, rap!

Carl almost overthrew the chair he was standing by, snatched up his little lamp, and stole to the door.

"Who is without, there?" he inquired, angrily, but not very firmly, with one hand hesitatingly extended towards the door handle, and the other holding his lamp; the flame of which, by the way, he fancied flickered oddly.

"Who is without there?" he asked again, for his first question had received no answer.

Rap, rap, rap, rap, rap!—Rap, rap, rap!

"In the name of—hem!—who are you?"

"Who am I?" replied a husky, and somewhat hollow voice, from without. "Who am I, i' faith?—Let me in! Let me in!—Mercy—you could not be more uncivil, or perchance affrighted, if I were Jans Cutpurse, or the Spirit of the Hartz mountains. Let me in, Carl Koëcker, I say—Let me in!"

"Let you in? Der teufel!"

"Come, come—open the door!"

"Who are you? Who are you, I

say?" continued Carl, pressing his right hand and knee against the door.

"Let me in at once, Carl Koëcker—let me in, I say—or it may fare fearfully with you!"

"Mein Gott!" exclaimed the confounded student, looking askance at his lamp, as though he expected to find a confidential adviser in it. The knocker, however, recommenced operations, with such astounding rapidity and violence, that Carl, in a momentary fit of fear and confusion, unguardedly opened the door. A tide of oburgatory expressions gushed up to his tongue, when some one suddenly slipped through the door past Carl, made his way to the fireplace, and sat down in the arm-chair which had been recently occupied by the student. This was done with the easy matter-of-fact air of the most intimate acquaintance. Carl Koëcker still held the handle of the door, staring open-eyed and open-mouthed at the stranger with unutterable amazement.

"Good Carl, prithee, now, shut the door—for 'tis bitter cold," exclaimed the unbidden guest, in a familiar tone, dragging his seat close to the fire, and rubbing together his shrivelled fingers to quicken the circulation.

"Come, Carl! shut the door, and sit down here," continued the stranger entreatingly. Carl, completely bewildered, obeyed, and sat down in a chair opposite the stranger. The latter seemed not unlike a Jew pedlar. He was small in stature, but of sinewy make. He wore a short coarse drab-coloured coat, or tunic, with double rows of huge horn buttons. His vest was of the same materials and cut; and, as was usual in those days with itinerant venders of valuable articles, he had a broad leathern girdle about his waist, with a pouch on the inside. His short, shrunk, curved legs were enveloped in worsted overalls, soiled and spattered with muddy walking. Removing a broad-brimmed hat, he disclosed a fine bald head, fringed round the base with a few straggling grey hairs. His face was wrinkled, and of a parchment hue; and his sparkling black eyes peered on the

student with an expression of keen and searching inquisitiveness. Carl, in his excitement, almost fancied the stranger's eyes to glare on him with something like a swinish voracity. He shuddered; and was but little more reconciled to the strange figure before him, when a furtive glance had assured him that at least the feet were not cloven!

When he allowed himself to dwell for a few moments on the strange circumstances in which he was placed—alone—near midnight, with nobody knew whom—a thief, a murderer, a wizard,—a disguised satellite of the infernal Inquisition—a devil, for aught he knew;—when, in a word, he gazed at the strange intruder, sitting quietly and silently by the fire, with the air rather of host than guest, and reflected how far he was out of hearing or assistance, if aught of violence human or supernatural should be offered—it was no trifling effort that enabled him to preserve a tolerable show of calmness.

"Heigh-ho!" grunted the old man, in a musing tone, with his eyes fixed on the fire, and his skinny fingers clasped over each knee.

"H—e—m!" muttered Carl, his eyes, as it were, glued to those of his guest.

"Well, Carl," said the stranger, suddenly, as if starting from a reverie; "it grows late, and I must begone ere long, having far to travel, and on pressing errands. So shall we discourse a little touching philosophy, or proceed at once to business?"

"Proceed to business?" echoed Carl, amazedly—

"Yes, I say, proceed to business. Is there anything so *very* odd in that?" inquired the old man, slowly, with a surprised air.

"Business!—*Business!*"—exclaimed Carl, muttering to himself; and he added, in a louder tone, addressing himself to his visitor—"Why, what the dev—"

"Pho, pho, Carl!—We have nothing whatever to do with the devil—at least *I* have not," replied the old man, with an odd leer, "and in these

ticklish times, I should think that the less *you* have, the better.—But, with your good leave, Carl, we will settle our business first, and then proceed to discourse on a point of Dr Von Dunder's lecture of this morning."—So this extraordinary personage had been present at Doctor Von Dunder's that morning—and, further, knew that Carl had!

"Carl," continued the stranger, abruptly—"are you still anxious for the bracelet?"

The question suddenly blanched Carl's face, and his eyes seemed starting from their sockets, as he muttered, or rather gasped, in faltering accents—"Devil! devil! devil! What want you with me? Why are you come hither?" He shook in his seat; for a certain circumstance occasioned a suspicion of the stranger's being an emissary of the Inquisition, to flash across the mind of the affrighted student.

"Who sent you hither?" he reiterated in faltering accents.

"Why, in heaven's name, are you so disturbed, Carl? I am really neither the devil nor one of his minions—having neither wit nor power enough for either," said the stranger, mildly.

"Then are you worse—you are from the Inquisition—and are sent to ensnare my soul to hell, and my body to tortures horrible!" rejoined Carl, a cold sweat suddenly bedewing his whole frame.

"Why, if it were so, I must surely be bolder than wise, to venture on such odds as are here. I am old and somewhat shaken of strength; you young and lion-like. Which would have the better, think you, in a struggle?" continued the stranger, meekly.

"Why," replied Carl, still shivering with the fearful suspicion—"you speak fairly and reasonably; and let me then as fairly tell you, that whoever you be, if you be but mortal, and wrong me, or attempt me mischief, I will put you to death as calmly and surely as I show you *this*"—and he drew a small poniard from his vest, clasped it fiercely in his hand, and extended the glittering blade to the

stranger, who merely crossed his hands on his breast, and looked upwards with an air of innocent resignation.

"Did I not say I was in your power, Carl? And is it probable I shall seek an offence with you?—Would I, an old feeble man?"—

"What brought you hither? What made you cause the uproar at my door just now?" inquired Carl, with some show of self-possession.

"Oh, faith—that is easily answered. Business—business! I have much to do with you, and but small time to do it in. Truly your fears are all false! I am, I repeat it, but a man even as you are—with the difference of an odd year or two—ugh! ugh! ugh!" continued the stranger with a feeble asthmatic laugh. "But, to be short. If your heart is still set upon the bracelets—I may, perhaps, put you in the way of obtaining them."

Carl strove to look calm—but the thing was impossible. His colour faded, his heart seemed fluttering about his throat as though it would choke him, and his eyes, as he fancied, emitted coruscations of fire.

"Old man! whoever, whatever, you are—I supplicate you to tell me how you know anything about the matter you speak of! How came you to know that I had any care about the—the—the bracelets?"—He could scarce get out the word—"for I have not breathed a syllable about them to any one human!"

"How did I know it? Pho, it might be a long, perchance a dull tale, were I to explain how I came by my knowledge in this matter. Enough that I know your soul gapes to get the bracelets. In a word, I came not here to tell you how I know what I do, but simply to put you in the way of obtaining what you want."

A cold stream of suspicion flowed over Carl's mind while the stranger spoke—and when Carl reverted to the many subtle devices known to be adopted by the Inquisition for entrapping their prey. Still Carl's anxious curiosity prevailed over his fears. The old man, after fumbling awhile about

the inner part of his girdle, took out what seemed to Carl a large snuff or tobacco-box. Opening it, he slowly removed two or three layers of fine wool; and then there glistened before the enchanted eyes of the student one of the most resplendent bracelets that had ever issued from the hands of cunning jeweller. He was lost, for a second or two, in speechless ecstasy.

"Oh, rare! oh, exquisite—exquisite bracelet!"—he gasped at length, so absorbed with the splendid bauble that he did not notice the almost wolfish glare with which the old man's eye was fixed on his.—"And may this be MINE? Did you not say you could put it into my power?"

"Ay, Carl, it *may* be yours!" replied the stranger, in a low, earnest tone, still fixedly eyeing his companion's countenance.

"Ay, ay! it may? Name, then, the price! Name your price, old man!" exclaimed Carl, eagerly. Checking himself, however, he added suddenly, in a desponding tone, "But why do I ask its price? Fool that I am, my whole fortune—ay, the fortunes of all our family, would not purchase *one* only of these jewels!"

The more Carl looked at the gorgeous toy, the more was he fascinated. It was studded with gems of such amazing brilliance, as to present the appearance of a circle of delicate violet and orange-hued flame, as the stranger placed it in different points of view. Carl could not remove his eyes from the bracelet.

"Take it into your own hands—it will bear a close scrutiny," said the old man, proffering the box, with its costly contents, to the student, who received it with an eager but trembling hand. As he examined the gems, he discovered one of superior splendour and magnitude; and whilst his eyes were riveted upon it—was it merely his nervous agitation—or, gracious heavens! did it really assume the appearance of a human eye, and of awful expression?

Carl's eyes grew dim, the blood retreated to his heart, and his hands shook violently as he pushed back the

box and its mysterious contents to the stranger. Neither spoke for some seconds. The old man gazed at Carl with evident astonishment.

"What—what shall I call you?" murmured Carl, as soon as he had recovered the power of speech. "What means that—that—that damned eye which looks at me from the bracelet? Do your superiors, then, use even sorcery to inveigle their victims?" His teeth chattered. "Away with your damned magic! Out on you! Away—or I shall call for help from without!" And Carl fiercely drew half out his poniard.

"Tut, man," rejoined the stranger, calmly, after listening with patience to Carl's objurgations. "Now, to hear you rave in this wise! You—a man—a scholar! The days of sorcery, methinks, are gone for ever; and as for the *INQUISITION* that you din into my ears, I myself fear, but more *hate*, that cruel and accursed institution. But what have we to do with it *here*? How are you to be carried off into Spain, good friend, supposing me to have come hither in my strength for such purpose?" This was said slowly and deeply—the speaker's eyes searchingly fixed on those of him he addressed. The student, however, answered not, and the old man resumed.

"'Tis but your own heated fancy that has likened one of these jewels to an *EYE*—he, he, he!" said he, with a faint attempt at laughter. "What is it that has frightened you but a large diamond? A human eye, i'faith—he, he, he!—But, to away with these womanish fancies, I would know, at once, Carl, as a matter of business, whether you wish to call yourself the owner of this bracelet?"

Carl paused.

"Will you really, then, give me no answer, Carl?"

"Ay—Heaven knows I would fain be its master—for 'tis an enchanting, a dazzling—yet a fearful——"

"Bah!" exclaimed the old man, impatiently.

"Well, then," continued Carl, doubtfully, "since temper fails you, I will to the point. Suppose, then, I were,

in a manner, disposed—I mean—hem!—What I would say, is—in short, if it were to come to pass that I were earnestly desirous (which I am not) of having this bracelet—not for myself, mark me, but for another——”

“To the point, man! To the point!” interrupted the stranger, with anxious asperity.

“Well, I say, if I were disposed to purchase the bracelet, what would be your terms? What must I do? What give?”

“Oh, my terms are most easy and simple—so much so, that you may perchance even laugh at hearing them. Find me but the fellow to this bracelet—and *both* shall be yours.”

Carl suddenly became cold and pale. The stranger’s peculiar words and manner had roused painful suspicions in the breast of the student—transiently however—that certain doings of his must be intimately known in certain awful quarters; and that the stranger’s plan was but a subtle trap for making him develop them. This feeling gradually yielded to one of sheer astonishment, as the stranger repeated his terms, in a significant tone, and with great earnestness of manner.

“I—I, Carl Koëcker—find you the fellow to this bracelet!” exclaimed the student. “Surely you must be mad, or mocking me.”

“Whether I be mad or not, concerns you little, so as I can make good my promise. You have my terms—you may make the bargain, if you have but a little spirit!”

“Will you give me till to-morrow night to consider whether I will accept them?” inquired Carl, after a long and puzzled pause.

“No,” replied the stranger, imperatively.

“Hem!” exclaimed Carl, suddenly; “so you have but *one* bracelet. How came you by it?—You know, old man, that if I buy it, I must be satisfied that I can keep it.”

“Keep your questions to yourself. Enough for you that I *have* it,” replied the stranger, sternly.

“Another question, nevertheless, I

must put. Where is the other bracelet?”

“It must be sought for,” replied the old man, gloomily, placing his broad-brimmed hat on his head, as if to overshadow his eyes—“and it is worthy the search, though a prince were the seeker. He, moreover, who shall have this, has a clue infallible to the discovery of the other.”

“Then why not search for it yourself?” inquired Carl, quickly. A flush overspread the stranger’s face, and he seemed, for a moment, somewhat confused.

“You are sent hither by the Inquisition,” said Carl, with a cold shudder, at the same time plunging his right hand into his bosom, in search of his poniard—half resolved to take summary vengeance on the daring and perfidious spy. He controlled himself, however, and repeated his question in a calmer tone.

“Why do not *you* seek for the fellow-bracelet, old man?”

“I may not, Carl. That must be sufficient for you. *You* need not enter on the search—you need not take this bracelet; but if you *will* venture, and should succeed, ’twill be the greatest day’s work you ever did. It will bring you riches and honour; and, above all, you shall see both these beautiful trinkets glistening on the white arm of her——”

“Hold! I madden! Speak not!” gasped Carl, springing with sudden emotion from his chair—pressing his hands against his forehead, and gazing fixedly on the bracelet, which the stranger still held in his hands.

“’Tis an overwhelming thought truly! It is!—but—but—I find the fellow to this bracelet?” he continued, with a bewildered air, “where, in Heaven’s name, am I to search for it?”

“Where you can, and where you dare,” replied the stranger, with a significant emphasis, which greatly impressed Carl.

“And how long shall I have to try my fortune?—Tut!—’tis an idle—a mad question truly, a foolish scheme; but, supposing—in a word, how long will you give me?”

"Two days from this time; and on the third, I will come and see you again."

"Alone?" inquired Carl, with a searching glance.

"Yes—alone," replied the stranger, pointedly.

"And can you give me no clue, whatever?—None?"

"No, assuredly; else the merit of your search would fail. You will not be long in finding one, if you do but set about the search heartily.—Ah, Carl, Carl," he added, suddenly, with as much gaiety as his extraordinary features could assume, "you have a white hand, and a small wrist!" Carl glanced at them complacently. "I wonder, now, whether it were small enough for this bracelet?—Try it on, man—try it on!—Your wrist, I think, is but a trifle larger than hers —" The last word brought the blood into Carl's face, even to his temples—and a tempest to his soul. Scarce knowing what he did, he took the glittering bracelet, and with a little difficulty, clasped it about his wrist.

"Ah, ha!—How wondrous well it suits you! In truth, it might have been made for you! Your wrist might have been a lady's!" said the old man, laughing; and, rising from his seat, he scrutinised the bracelet narrowly, and adjusted it more nicely. "And now, Carl Koëcker—see you part not with it, in your search! Farewell, Carl!" The stranger stepped towards the door.

"Stay—stay, old man!" exclaimed the student, amazedly. "Whither are you going? Ha—ha, Der Teufel!" he continued, almost leaping from the floor with sudden fright—Why, thou fiend! I cannot remove the bracelet! It clings to my wrist like adamant!—It will cut my hand off! Ah—ah—it is cutting to the bone," he groaned. He strove violently to wrench it off. "Take it off! Take it off—I cannot move it! Help, help!—dear, good old man, for mercy's sake —" But his visitor was opening the chamber-door, anxious to be gone. Carl followed him, making frantic efforts to dislodge the bracelet from his wrist, which experienced a fearful sense of compression.

"Good sir! Kind old man—whoever you are, wherever you come from—whatever your errand, even be it from the horrible Inquisition—for God's love, help me to remove this bracelet!—Oh—" he groaned, "will you not take it off?"

"Off?—never!" shouted the old man, with an unearthly laugh, and an eye of dreadful derision. The student dropped his hands, fell back aghast a pace or two, and stared at the stranger, with eyes that seemed bursting from their sockets. The perspiration started from every pore.

"Never—oh, *never*—did you say?" gasped Carl, renewing his desperate efforts to remove the bracelet. He grew desperate. Villain! fiend! You have played a hell-trick against me! Will you yet say *never*?"

"Ay—*never*, till you find its fellow," replied the old man, pointing his shrivelled finger at the student.

"Accursed wretch! Deceiving devil! Then will we struggle for it. Ho, have at you," almost shrieked Carl, springing forward to grapple with his tormentor; who, however, at that moment slipped through the open door, shutting it in Carl's face; and as the old man went rapidly down stairs, Carl heard him exclaiming in tones—fainter and fainter as the distance increased—"Never, Carl; never, never!"

Carl staggered stupefied to a seat, and sat for some moments the image of despair. He would have rushed out after the old man, but that a deadly faintness seized him. He could not bring his scattered senses to bear for an instant on any one point of the preceding interview. He felt like a man suddenly roused at midnight from a frightful dream. Had he been asleep and dreaming? Alas, no! There was fearful evidence, palpable and visible, of waking reality. His eye happened to alight on the bracelet glistening with now abhorred splendour on his wrist. With frantic effort he once more strove to disengage it, but in vain. He could not move it; it seemed to have become imbedded in his flesh! He rose from his chair, and

paced his room in an ecstasy of alternate fear and fury. What had come to him? Was he under the spell of witchcraft? Was he the sport of diabolical agency? Or, worse than either—the sealed victim of the Inquisition? Had they sent their emissary to probe him, and leave this cunningly framed bracelet as an irremovable evidence of their man—even as sheep are marked for the slaughter? As this latter suspicion flashed across his mind with increasing probability, he sunk in his chair, overwhelmed with anguish and horror; and from his chair to the floor. What was to become of him? What could he do? Whither was he to fly? How ascertain the criminatory extent of the information on which they acted. He knew not! He closed his eyes, for everything about him seemed turning round, and assuming grotesque images and positions. After lying for some minutes on the floor, he suddenly sprung to his feet, convinced that the extraordinary occurrences of the evening could have no other foundation than fancy—that he must have been suffering from the nightmare. He stepped into his sleeping-room, and plunged his head and face into a bowl of cold spring water. The shock for a few moments revived and recalled his wandering faculties; but in wiping his face, the accursed bracelet scratched his cheek—the delusions of hope vanished in an instant, and flinging aside his towel, he rushed from the room in despair. The silence and solitude of his apartment had become intolerable. Whither should he go, that the Inquisition hounds could not follow, find, and seize him. He began to imagine that they had pressed the arts of sorcery into their assistance. He felt, in a word, that his fears were maddening him. He could bear his rooms no longer: so putting his cap on his head, and throwing a cloak over his shoulders, he went out, hoping to see, or at least hear tidings of, his dreadful visitor.

The night, far advanced, was cold and gloomy—the winds blew chilly, and the snow was fluttering fast. He spoke to one or two of the drowsy

shivering watch, and asked whether they had seen any one answering to the description of his visitor. One of them told him with a yawn, that only a quarter of an hour before, he had seen an old man pass by, that stooped, and wore, he thought, a broad hat and drab coat; that he walked at a great rate down the main street, *followed by two men in dark dresses!* Carl fell into the arms of the watchman, deprived of sense and motion. The last clause of the man's intelligence had confirmed his worst fears—**THE INQUISITION WERE AFTER HIM!**

After a while, the attentions of the humane night-guardian, backed by a little spiced ale which he carried in a leathern bottle, sufficed to revive Carl, who was able, soon after, to proceed, after giving the watchman some small coin. What was Carl now to do? To return to his rooms was impossible. He hurried on through the street, why, or whither, he knew not. He felt a sort of drowsiness or stupor creeping over him. Suddenly he nearly overthrew what proved to be a female figure muffled in a long dark dress. His hair stood on end—for, at the first moment, he mistook her figure for that of one of the "men in dark dresses," spoken of by the watchman—of the familiars of the Inquisition. While recoiling shudderingly from her, he fancied he heard himself addressed—"Follow!" said the low hurried voice of a woman—"Follow me, and be silent. You have been expected this half-hour. 'Tis foolish—'tis cruel thus to delay!"

"I—I *expected*?—gasped the staggering student—"Why, do you know me?"

"Know you?—why, Carl Koëcker, of course," replied the female; adding in a low imploring tone—"Oh, follow—for Heaven's sake, follow instantly, or all will be lost!"

"Lost!—why, am not I, rather, lost? In God's name, whither would you lead me? Are *you* in league with that old——" Carl was interrupted by his companion whispering hurriedly—"Hush! the good folks of Goettingen will hear you!"

She had scarce uttered the last words, before Carl thought he heard the faint echo of many voices at some distance, from behind—and which seemed, as they grew nearer, to be loud and tumultuous. He suddenly turned towards the quarter whence came the sounds of distant uproar, when he beheld several torches gleaming dimly far off, and held by persons hurrying to and fro in all directions. The sounds approached, and as they became more distinct, were evidently those of alarm.

"What in God's name is stirring now?" inquired Carl of the female he was accompanying. "Can you tell me wherefore is all that uproar?" Her spectral stare almost froze Carl's blood, as she answered in a low quick tone—"Ah—do not you know, Carl Koëcker?—a deed of blood and horror——" She was interrupted by the startling clangour of the alarm-bell, pealing with prodigious rapidity and violence. Carl shuddered—and well he might. What is capable of inspiring more thrilling terror than the gloomy toll of a church-bell, heard with sudden loudness at midnight?

The whole town of Goettingen was roused. Carl listened: his hair stood on end, his knees tottered, his brain reeled—for the cries were those of murder and revenge: and amid all the tumult of the voices, and the sullen but rapid tolling of the bell, Carl distinctly heard—his own name! Half stunned with the thought, he listened—he strained his ear to take in every sound that sought it. "Carl Koëcker" was the name uttered by a hundred tongues; and Carl Koëcker was sought after as a murderer. He would have shouted in answer—he would have discovered himself, conscious of his innocence—but he felt a suffocating pressure about his throat, and his heart seemed likely to burst through his side. Strange lights flashed before his eyes, and his knees seemed about to refuse him any longer their support, when his unknown companion suddenly grasped his hand between her cold fingers, whispering—"Carl, Carl, you must hasten! Fly! fly!

You will fall into their hands! They are yelling for you! They are as tigers drunk with blood!"

"I care not! I am innocent! I have done no crime! Why, then, should I fly? No, I will stay, with God's help, till they come up," murmured the fainting student. Meanwhile the clamour of voices grew nearer and louder. Innumerable torches flitted to and fro, casting a discoloured glare over the dusky atmosphere.

"Haste, Carl!—Haste, murderer, haste! haste!" muttered the woman by his side—"Justice flieth quickly after her victims!"

"Wretch! what are you saying?" stammered Carl, beginning to suspect himself the victim of diabolical villany. He tried to grasp his companion by the arm—but his hand was powerless. A sudden recollection of the stranger who had given him the bracelet, and of the mysterious circumstances attending the transaction, flashed with fearful vividness before his mind.

"Woman, woman!" he faltered, "Who is murdered? Is it—is it——"

"Fly, fool! Fly, fly, fly!—The familiars are near at hand! The blighting brand of the Inquisition will discover——"

"The *what*—what!" groaned Carl, his eyes darkening for an instant, and his voice choked.

"Only thou fly, fly!"—continued the woman, hurrying him forward. The crowd of torch-bearers seemed now at but a little distance; and Carl, overwhelmed and bewildered,—his consciousness of innocence drowned in the apprehension of pressing danger—needed but little urging to step into a vehicle standing at the corner of a street they had just entered. He scarce knew what he was doing. Immediately on his sitting down, the door was closed, and away shot the vehicle, rolling as rapidly as four fleet horses could carry it.

Carl found himself alone in the coach—if such it was—for his conductor had suddenly and most unexpectedly disappeared. The utter extremity of fright, amazement, and perplexity, is

too feeble a term to convey anything like an adequate idea of the state of Carl Kœcker's feelings, when thus, after such an astounding series of events, hurried away no one knew how, why, or whither.

Visions of inquisitorial horrors flitted through his perturbed mind. To what scenes of ghastly—of hopeless misery was he now, perchance, being hurried? He sunk back on the seat, and swooned. How long he had continued insensible he knew not. When he recovered he found himself rattling onward at a prodigious rate, and amid profound darkness: he stretched his hand out of the window of the vehicle, and the snow fell fast and thick upon it. He listened, but heard no sound, except the rapid and regular tramp of horses' hoofs, and the rustling of the branches, against which the roof of the vehicle brushed in passing. He could not hear the voices of either driver or attendants. In a sudden fit of frenzy, he threw down one of the windows, pushed out his head, and roared for rescue—but his cries were unattended to. He then strove to force open the door, that he might leap out, though at the hazard of his life; but his utmost efforts were useless! He tried if the window-spaces were large enough to admit of escape—but they were too small to admit of a child's exit! What was to become of him? After again and again trying to force open the doors, he wearied himself, and fell at full length on the seat, sullenly resigned to his fate, under the conviction that he was either in the toils of the Inquisition, or the hands of thieves and murderers. But what could the latter want with a poor student? For the former suspicion, his quaking heart could readily assign grounds!

He lay in a state of stupor, till the sudden stoppage of the vehicle almost jerked him from his seat, and sufficiently roused him to perceive that the carriage was standing before the gates of a magnificent building. Where he was, or how long his journey had lasted, he had no idea; and unutterable, therefore, was his astonishment to behold

the altered aspect of nature. The time appeared about two or three o'clock in the morning. The gloom and inclemency of the former part of the night had entirely disappeared. The scenery, at which he glanced hastily, seemed of a totally different class from that which he had been accustomed to behold. The glorious gilding of the full moon lay on every object—alike on the snowy shroud glistening over endless plains and hills—as on the quarried clouds lying piled irregularly, one above the other, in snowy strata along the sky. Their edges seemed all melting into golden light.

The building before which the carriage had drawn up, seemed a vast grey mass of irregular structure, the prevailing character of which was Gothic. Whether, however, it were a castle, a palace, a prison, a nunnery, or a monastery, Carl's hurried glance could not distinguish. He had scarce time to scan its outline, before the carriage-door was opened, by (as Carl observed) removing a *large bar* from across the outside, and a string of attendants, habited in somewhat of military costume, stood ready to conduct the solitary visitor to the interior of the building. After a moment's pause of stupefied irresolution—uncertain whether or not to make a desperate attempt at escape—he alighted, and followed the chief of the attendants towards the interior of the building. Every step he took within the splendid, though antique structure, convinced him that he had entered a regal residence. He paced along seemingly endless galleries and corridors, with the passive, or rather submissive air of a man led along guarded prison-passages to execution. He was at length ushered into a large tapestried apartment, in the centre of which was spread a supper-table, sinking beneath a costly service of gold and silver. Scarce knowing whether or not—in the vulgar phrase—his head or heels were uppermost, Carl sat himself down mechanically at the table; and the obsequious attendants instantly removed the covers of several dishes. When Carl saw the expensive dainties spread

before him, and the magnificent plate which contained them, and marked the solemn and anxious deference paid him by the servants, he felt convinced that through some inexplicable blunder, he had been mistaken for an expected visitor of the highest distinction. The tumultuous and terrifying scenes which had ushered in his journey, were for a while obscured from his recollection. Carl found it impossible to partake of the exquisite fare before him. He contrived, however, to quaff an ample cup of rich wine, which soon revived his torpid faculties. He turned towards the silent servants, stationed at due distances from him, and inquired, in a stern tone, what they were going to do with him,—“whether they knew who he was?” A respectful obeisance was the only answer. “That he was Carl Koëcker—a student of Goettingen University?” A second and lower bow. A third time he repeated his question, but the only answer he could obtain was a brief intimation, couched in the most deferential terms, that “Her Highness” was waiting his appearance in the audience-room. Carl clasped his hands over his forehead, lost in wonder and despair.

“Who—who, in Heaven’s name, is ‘Her Highness?’” he inquired.

“She has been long expecting your arrival with anxiety,” replied one of the servants, apparently in nowise surprised at the disorder of their youthful guest.

“Waiting—and for my arrival?—Impossible!—You are all wrong, fellows! I am not he whom you suppose me! I am mistaken for some one else—and *he* can be no one of importance, seeing I, through being mistaken for *him*, was kidnapped away! Harkee, sirrahs—do you understand?” The servants looked at one another in silence, and without a smile. “Do you know who I am?” continued Carl in a louder key—but in vain; he received no answer. The servants seemed to have been tutored.

“Alas!” resumed Carl, in a low tone, “I ask you who I am, when I verily know not, myself!—Aha! Who

am I? Where?—Why here?—Answer! Tell me! Speak there!” continued Carl, resolutely, relying on the wine he had taken, and which he felt supplying him with confidence. “Once more, I say—Who am I?” he repeated.

“*That*, we suppose, your Highness best knows—but our duty is to wait and conduct you into her Highness’s presence,” was the only answer he received, delivered in the same steadfast respectfulness of tone and manner.

“Where will all this mummery end?” thought Carl, pouring out, mechanically, another cup of wine. The thought suddenly struck him, and the more he entertained it, the more probable it appeared—that, after all, the whole of his evening’s adventures might be the contrivance of one of those celebrated and systematic hoaxers, of whom, in Italy, the illustrious Lorenzo was chief. Every occurrence of the evening seemed easily explicable on this hypothesis—but one; the general uproar in the streets of Goettingen at the period of his leaving. *That* savoured too strongly of serious reality to be part of a *hoax*!—While he was turning about these thoughts in his mind, one of the servants opened a door, and stood by it, as if hinting that Carl was expected to rise from table and follow. Resolved patiently to await the issue, he rose, and walked towards the door. He was conducted up an ample staircase, leading to a lofty hall, supported by marble pillars. After traversing it in silence, his conductors opened a pair of large folding-doors, and ushered Carl through them—gently closed the high doors upon him, and retired. Carl now found himself in an apartment equally magnificent with the one he had left. Here, however, there was not—as in the other—artificial light; but the room was, so to speak, flooded with a radiant tide of moonlight. Everything about him, to Carl’s disturbed apprehension, wore the air of mystery and romance. The silence of the sepulchre was there, and it oppressed him. He dared hardly draw his breath, fearful of its being audible. He was reluctant to move from the

spot where he had first stood, lest he should dissipate the nameless charm of the chamber, or encounter some unwelcome and startling spectacle. Whichever way he looked, there was a dim and dreary splendour which transcended the creations of poetry. Almost the whole extent of the farther extremity of the chamber consisted of a large Gothic-fashioned window, with a door in the centre of it, opening upon a narrow slip of shrubbery or terrace. The prospect through this window was most glorious. The moon was still

"Riding at her highest noon,"

like a bright bark over a sea of sapphire, scattering her splendour over streams glittering like veins of silver amid a noble extent of champaign country; and rendering visible, in the distance, hoary structures of prodigious extent, relieved against a background of profound forest shade. A little to the right lay a lake of liquid silver! But the most marvellous circumstance of the whole, was the disappearance of the snow he had so lately seen. Was it possible—thought Carl, pressing his hands to his forehead—that he had slept through an interval of twenty-four hours since he saw the snow? Had he taken drugged draughts at supper, and but now awoke, unconscious of the interval that had elapsed? This extraordinary absence of snow was, as already said, the first or chief thing observed by Carl, hurried as was his glance; but ere long a very different object, within the chamber, arrested his attention, absorbing every faculty in mute astonishment and admiration. At the upper extremity of the chamber the resplendent moonbeams fell on the figure of a lady, white as snow, reclining on a couch, with her head supported by her arm. Never before had Carl beheld, even in dreams, a vision of such dazzling beauty. So perfectly symmetrical were her features, so delicately moulded was her figure, so gracefully negligent her attitude, and so motionless withal, that Carl, as he glided slowly towards her, his eyes and hands elevated with rapturous

astonishment, began to suspect he was mocked by some surpassing specimen of the statuary's art. As he drew nearer, he perceived that the lady was asleep—at least her head drooped a little, and her eyes were closed. He stood within a few paces of her. He had never before seen features so perfectly beautiful. Her brow wore the pure hue of alabaster; her eyebrows were most delicately pencilled and shaded off; her nose, of soft Grecian outline, was exquisitely chiselled; and her small closed lips seemed like a bursting rose-bud. The lilled fingers of the little hand supporting her head, peeped out in rich contrast from among her black tresses; while her right hand lay concealed beneath the folds of a long rich veil. What with gazing on the lovely recumbent, and the generous potency of the wine he had been drinking, Carl felt himself, as it were, under quite a new influence. Fear and doubt had passed away. He fell softly on his knees before the beautiful unknown. Her features moved not.

Now, thought Carl, was she inanimate—a cunning piece of wax-work, and were the contrivers of the hoax, if such it were, watching him from secret parts of the room, to enjoy his doings.

He imagined, however, after steadfastly eyeing her, that he perceived a slow heaving of the bosom, as though she strove to conceal the breath she drew. Intoxicated with his feelings, Carl could continue silent no longer.

"Oh, lady, if mortal you be—oh, lady, I die at your feet!" he stammered with a fluttering heart.

"Carl, where have you been? You cannot—no, you cannot love me, or you would not have delayed so long!" replied the lady, in a gentle tone, and with a glance "fuller of speech unto the heart than aught utterable by man." What dazzling eyes were fixed upon the sinking student!

"I would to Heaven," he stammered, "I might believe you—loved me; but—but—lady—"

"But what?—Ah, Carl! Do you—after all that I have suffered and risked

for you, doubt me?" inquired the lady, gazing at him with an eye of anxious tenderness. Carl's tongue refused him utterance for some moments, and he trembled from head to foot.

"How, fair one, can you say that you love one whom you know not? *Me* you know not——"

"*Not know you!*—Oh, Carl, Carl!" and she looked at him with a tender maddening smile. The student stared at her in silence.

"Lady," at length he gasped, "I am bewildered! I know not where I am, nor how I came hither! Yet, blessed be Heaven, that I have thus seen you. I could die with your image in my eye! It would pass me to heaven! Oh, forgive me, lady, knowing that I rave! Your beauty maddens me! I sink—I die beneath it! I know not, nor can control, what my tongue utters! The only thing I know is, that I am unworthy of you——" He paused, dropping his head upon his bosom.

"Then, Carl," said she sweetly, "is my love for you the greater, seeing it can overlook all unworthiness! But, dear Carl, why speak I thus? You are not unworthy—no, no! You are of great wit—graceful, noble—in a word, I——"

"Speak, lady!—speak, speak! Delay not! I faint—I die!" murmured the impassioned student.

"Well, I love you Carl! I have long loved you, since first my eye fell on you. Pardon the scheme——" Here the lady became inarticulate with agitation. A long pause of mutual trepidation and embarrassment ensued. Each cast but furtive glances at the other; the conscious colour went and came alternately, in the cheeks of both.

Carl, still bending on his knee, gently strove to disentangle the hand which lay concealed beneath the folds of her veil. He succeeded, feeble as was the force he used; but the hand was still enveloped in the folds of a long white glove.

"May I not kiss these fair fingers but through a glove?" inquired Carl,

fondly, and with returning self-possession.

"Why, you are truly of a sudden grown chivalrous as a knight of old," replied the lady, in a tone of subdued gaiety; "but since such is your ambitious fancy, why should I refuse you so small a favour, who can refuse you nothing? So, here is my *right* hand, Sir Knight. What wouldst thou?"

She disengaged the hand on which her head had been leaning, and gave it to Carl, who smothered the taper fingers with kisses. Infatuated with sudden unaccountable passion, Carl, in a sort of frenzy, started from his knee, threw his arm around the sylph-like figure of the lady, and imprinted a long, clinging, half-retained kiss upon her soft lips!

He had neither time nor inclination to reflect on what he was doing—on the insane 'freedom of his behaviour to a lady evidently of the highest consideration, with whom he had had—and that in the most unsatisfactory and mysterious manner—only a few minutes' acquaintance. In vain did he strive to calm and settle his unsteady faculties, or sober himself into a consciousness of his real situation—of how he came thither—and how had come to pass the astounding events of the evening. He forgot all his harrowing suspicions of inquisitorial devilry; he thought no more of the possibility that his frantic feats were the subjects of suppressed laughter to invisible hoaxers! Everything merged into his intense consciousness of present pleasure. He yielded to the irresistible impulse of his feelings, blind and indifferent to consequences.

"'Tis all owing to the wine I drank in the supper-room!" thought Carl; but, alas, how little did he know of the important events with which he had got extraordinarily implicated; of the profound and subtle influence which was at work preparing for him scenes of future change and suffering!

A few minutes' time beheld Carl pacing slowly up and down the spacious chamber, supporting his beauti-

ful and mysterious companion, watching with ecstasy her graceful motions, and pouring into her ear the impassioned accents of love; not, however, without an occasional lightness of manner, which he could neither check nor disguise. When he listened to the dulcet melody of her voice, which fell on his ear like the breathings of an Æolian harp; when he observed her dove-like eyes fixed fondly upon him; and felt the faint throbbings of her heart against the hand that supported her, he almost lost all consciousness of treading among the lower realities of life.

Whilst Carl was thus delightfully occupied, his companion suddenly turned aside her head, and, to Carl's amazement and alarm, burst into a flood of tears. Burying her face in the folds of her veil, she began to weep bitterly. "For mercy's sake, dear lady, tell me what ails you!" inquired the confounded student. He repeated his question; but in vain. His reiterated inquiries called forth no other answer than sobs and tears.

"Lady! dear, beloved lady—why are you bent on breaking my heart? Have I then so soon grown unworthy in your eyes?" again inquired Carl, a little relaxing the arm that supported her, as though grieved and mortified at her reserve.

"Oh Carl, Carl! Indeed you are most worthy of my love, of all my confidence; but you cannot help me! No, no—I am undone! Lost, lost, lost for ever!" replied the lady, in heart-breaking accents.

Carl begged, entreated, implored to be made acquainted with the cause of her agitation, but in vain. By a process which can be easier conceived than explained, commiseration was freezing fast into something like downright anger.

"Lady, if you think me thus unworthy to share your grief—to be apprised of its source—that so I may acquit *myself*, I—I—I cannot stay to see you in sufferings I may not alleviate! I must—yes, I must leave you, lady—if it even break my heart!" said Carl, with as much firmness as he

could muster. She turned towards him an eye that instantly melted away all his displeasure—a soft blue eye glistening through the dews of sorrow—and swooned in his arms.

Was ever mortal so situated as Carl, at that agitating moment? Inexpressibly shocked, he bore his lovely but insensible burden to the window; and thinking fresh air might revive her, he carried her through the door, which opened on the narrow terrace as before mentioned. While supporting her in his arms, and against his shaking knees, and parting her luxuriant hair from her damp forehead, he unconsciously dropped a tear upon her pallid features. She revived, and presently smiled with sad sweetness on her agitated supporter, with slowly returning consciousness, and passed her soft fingers gently over his forehead. As soon as her strength returned, Carl led her gently a few paces to and fro on the terrace, thinking the exercise might fully restore her. The terrace overlooked, at a great height, an extensive and beautifully disposed garden; and both Carl and his mysterious companion paused a few moments to view a fountain underneath, which threw out its clear waters in the moonlight, like sparkling showers of crystal. How tranquil and beautiful was all before them! While Carl's eye was passing rapidly over the various objects before him, he perceived his companion suddenly start. Concern and agitation were again visible in her features. She seemed on the point of bursting a second time into tears, when Carl, once more, with affectionate earnestness, besought her to keep him no longer in torturing suspense, but acquaint him with the source of her sorrows.

"Lady, once more I implore you to tell me whence all this agony?" She eyed him steadfastly and mournfully, and replied, "A loss, dear Carl—a fearful—an irreparable loss."

"In the name of mercy, lady, what loss can merit such dreadful names?" inquired the student, shocked at the solemnity of her manner, and the ashy hue which her countenance had as-

sumed. She trembled, and continued silent. Carl's eyes were more eloquent than his lips. Seeing them fixed on her with intense curiosity and excitement, she proceeded:

"It is a loss, Carl, the effects of which scarce befits mortal lips to tell. It were little to say, that unless it be recovered, a crowned head must be brought low!" She shuddered from head to foot. Carl's blood began to trickle coldly through his veins, and he stood gazing at his companion with terrified anxiety.

"Carl!" continued the lady, in a scarcely audible murmur, "I have been told to-day—how shall I breathe it!—by one from the grave, that you were destined to restore to me what I have lost—that you were Heaven's chosen instrument—that *you alone, of other men, had rightly studied the laws of spiritual being*—could command the services of EVIL SPIRITS," she continued, fixing such an awful eye upon him, that it palsied his soul.

"Lady, pardon me for saying it is false, if it has been so slanderously reported to you of me; ay, false as the lips of Satan! I know nought of spirits—nought of hereafter, but through the blessed Bible," replied Carl, in hurried accents, a cold perspiration suddenly bedewing him from head to foot. His feelings began to revolt—to recoil from his companion—whom he could not help suddenly likening to the beautiful serpent that beguiled Eve; but she twined her arms closely around him, and almost groaned in heart-moving accents, "Oh Carl, Carl! that I might but tell you what I have heard of you, or rather what I know of you!"

There had been something terrible in her demeanour, latterly. She seemed speaking as if of set purpose, and her eye was ever alive, probing Carl's soul to see the effect of what she uttered: so, at least, thought Carl. All his apprehensions about the hideous Inquisition revived, and with tenfold force. Was this subtle and beautiful being one of THEIR creatures? A fiend, cunningly tutored to extract his soul's secret, and then betray him

into the fiery grasp of torture and death?

It was long before he could speak to her. At length he exclaimed, "For mercy's sake, lady, tell me what frightful meaning lurks beneath what you say? What is your loss? What do you know, or have heard, of ME? Tell me, though I die!"

"Can you, then, bear a secret to the grave, unspoken?" she inquired, gazing at him with an expression of melancholy and mysterious awe.

"*Did Thurielma appear again?*"

The student gave a horrible start, turned ghastly pale, and almost dropped her from his arms.

"I know not what your words mean," he stammered, almost swooning. His companion's eye was fixed on him with well-nigh petrifying effect.

"Carl," said she, in a low tone, "I am about to tell you the source of my sorrows—that is, my loss. There is none near to overhear us?" she inquired faintly, without removing her eyes from Carl's.

"None! none!" murmured the student, a mist clouding his eyes; for, at the moment of his companion's uttering the words last mentioned, he had distinctly seen a human face peering over the edge of the lofty terrace.

He shook like an aspen-leaf, shivering under the midnight wind.

"What have you lost?" he inquired.

"The fellow to THIS," replied the lady, drawing off the glove from her left hand, and disclosing a bracelet, the very counterpart of that in Carl's possession. His brain reeled;—he felt choked.

"What—what of him—that—hath its fellow?" He faltered, sinking on one knee, unable to sustain the burden of his companion.

"He is either a sorcerer, a prince, or a murderer!" replied the lady, in a hollow broken tone.

Carl slowly bared his shaking arm, and disclosed the bracelet gleaming on his wrist. He felt that in another moment he must sink senseless to the earth; but the lady, after glaring at the bracelet, with a half-suppressed shriek, and an expanding eye of glassy horror,

suddenly sprung from him, and fell headlong over the terrace, at the very edge of which they had been standing.

"Ha—accursed, thrice accursed traitor!" yelled a voice close behind him, followed by a peal of hideous laughter. He turned staggeringly towards the quarter from which the sounds came, and beheld the old man who had given him the bracelet, and now stood close at his elbow, glaring at him with the eye of a demon, his hands stretched out, his fingers curved like the cruel claws of a tiger, and his feet planted in the earth as if with convulsive effort.

"Thrice accursed wretch!" repeated the old man, in a voice of thunder; "what have you done? Did not her highness tell you who you were?"

"Tell me!—what?"

The old man suddenly clasped Carl by the wrist covered with the bracelet; his features dilated with fiendish fury; his eyes, full of horrible lustre, glanced from Carl to the precipice, and from the precipice to Carl.

"Tell me!—what?" again gasped the

student, half dead with fright, striving in vain to recede from the edge of the terrace. The hand with which the old man clasped Carl's wrist, quivered with fierce emotion.

"Tell me"—once more murmured Carl—"What did she say?"

"Bah!" roared his tormentor, at the same time letting go Carl's wrist, and, slipping over the edge of the terrace, he was out of sight in an instant—leaving Carl Kœcker BROAD AWAKE, and in darkness, for, with his horrified start, he had broken his lamp, and overthrown both chair and table. His fire had gone out to the last cinder, and a ray or two of misty twilight, struggling through the crevices of the window shutters, served to show him how long he had been DREAMING.

He groped his way to bed, shivering with cold, and execrating the opera which he had recently witnessed, whose ill-assorted recollections, with other passing fancies, had been moulded into so singular and distressing a DREAM.

January 1832.

MY FIRST CIRCUIT :

LAW AND FACTS FROM THE NORTH.

IN A LETTER TO CHRISTOPHER NORTH, ESQ. FROM AN OLD CONTRIBUTOR.*

* * * THE next moment I was enclosed in the hackney-coach, opposite the large portmanteau which contained my little *all*. 'Twas a truly miserable vehicle, and the sight of the skinny feeble horses made one's heart ache. "Where shall I drive to, sir?" inquired a husky voice out of a heap of old clothes from the coach-box. The Jarvey was a small spare fellow, with a thin face, and sharp watery eyes, and keen red nose—he looked as if he had been drinking gin all night. "Where to, sir?" he repeated. "Oh—Plowden Buildings, in the Temple, to take up a gentleman and his servant: and heark'ee—make haste, for Heaven's sake!—'tis a quarter past nine already, and we must be at the Swan with Two Necks by ten o'clock exactly. D'ye think we can do it easily?" "Oh, yes, sir—but ye see, we han't a hap'orth o' time to lose. Go it, ye cripples—go it!" he added, addressing his horses, at the same time tenderly recommending his suggestions to their attention by sundry blows upon their bony flanks—and off we rumbled from the door. Ah me, how nervous I became! for we could not be going at a less rate than half a mile an hour; and imagine a stoppage in some of those infernal sinuosities leading from Cheapside to the coach-office; or even a break down! with an eye to the avoidance of which latter mishap

doubtless it was that Jarvey went the gingerly pace he did—and which kept me in a fever of apprehension. Then there were my friend Q. and his servant, with Heaven knows how much luggage, to be got into and upon the rickety fabric! Q., however, was (for once in his life) ready and waiting for us—and in a very short time we drove off, having exactly nineteen minutes in which to go from almost the extremity of the Temple to Lad Lane by ten o'clock. Oh! Christopher, why will mortals push off everything to the eleventh hour? Why do they take so little care to set out on a journey calmly and comfortably—loving rather to pass the precedent hour in a stew and perspiration—curses rising momentarily to their lips from a soul boiling over with irritability? Woe was me! Up Fleet Street and Ludgate Hill we positively *crawled*. When we reached St Paul's it wanted ten minutes to ten o'clock. Good; but we had to go round St Paul's Churchyard—and I did not know in what part of Cheapside Lad Lane was; and our horses seemed, through mere exhaustion, to be slackening even the sorrowful pace at which they had hitherto gone. The line of somebody on the death of somebody—

"The weary wheels of life at length stood still!"—

was present to my mind every mo-

* Only such portions of this paper are given as seem likely to amuse and interest general readers.

ment. Q. and I made many good resolutions—as we kept our eyes on our watches, and popped our heads out of the windows every half-minute to see whether the road was clear—that we would never run so near the wind again. We got into Cheapside, however, duly ;—there we were only once interrupted for about half a minute ; and just as our watches showed four minutes to ten, we turned down a very narrow street on the left hand side, leading down directly to the coach-office. When we had got about three quarters down this street, we were stopped by two large and most enormously-laden carts, standing one on each side—and how to get on we knew not. In vain our little Jarvey squeaked out curses against the lubberly carters, who listened with a contemptuously indifferent air, and deigned no reply. In an agony I opened the coach door, jumped out, and ran down to the coach-office to tell the people where we were. It was much farther down than I had suspected ; I rushed breathless into the yard.

“Does not the *Estafette* Birmingham coach start from this place?” I inquired eagerly of a man lazily slashing water over the mud-bespattered wheels of a mail-coach.

“Yes, it does ; but it’s off this ten minutes and more.”

“Off !”

“Yes, sir.”

“What !—gone !”

“Yes—starts werry punctual indeed—at a quarter to ten, and doesn’t stop no time for nobody, never, sir !”
Obstupui !

“Do you really mean that the coach is gone ?”

“Yes”—slap went another painful over the wheels of the mail-coach.

“Why, the people told me when the places were taken, that the time was ten o’clock exactly.”

“Did they, indeed, sir ? Then they was quite wrong, sir, and no mistake,” he replied, phlegmatically.

“Good heavens ! what shall we do ? We’ve paid our fares.”—

“Never returns no money, b’lieve.”

“Have we a chance of catching the coach, anywhere ?”

“Why—not much,” said he, taking off his cap to scratch his head—“but if you like you may try, sir ; if you goes *uncommon* quick you may have a chance of catching the coach at the Angel, at Islington.”

A hopeful beginning this of my *first circuit*. I came back to the coach, which I found had just got past the two carts above spoken of, and communicated the dismaying intelligence to Q. and the coachman. I looked at the horses, and my heart smote me, as I said, “Come, off !—off for the Angel, as fast as ever you can go !—our only chance !” In a trice we were on our way, and soon got into a long broad straight street or road that led directly towards the Angel. We really galloped all the way. How the poor beasts contrived to go such a pace I know not, though I could hear the grievous thwacks incessantly “raining influence” on their lean hides. My heart ached for the wretched beasts ; and I thought, thank God ! we shall, at all events, have nothing of this sort upon the railroad—the *engine* can’t draw on one’s sympathy !

But at length, as we dashed round to the Angel, there stood a coach—the *coach*—ready to start, the coachman with his foot on the wheel, and the whip and reins in his hand, and the guard evidently looking out for *some* one. “Come, come, gentlemen, really but this ain’t the correct thing ; I’m a quarter of an hour behind my time with waiting for you ! Come, jump up, gentlemen—jump up—the porter will put your luggage on ; quick, Jarvey, quick !” The offended Jehu was obeyed ; we paid the Jarvey seven shillings, the scamp demanding ten (!)—the servant got up on the front, Q. and I behind—crack went the whip, off were whisked the cloths from the horses, cheerily blew the guard his horn—and away we went at a rattling pace !

Hurried as had been our latter movements, I had contrived to purchase a *Times* newspaper before the coach set off, but, on attempting to

read it, found that the wind was too high; so I was obliged to put it into my pocket for a more convenient season. "Ah!" thought I, as we rattled rapidly along, "every step carries us farther away from the centre of action and influence—glorious London! Tomorrow morning, and for the next three weeks or so, I shall be a day behind the world: I shall get everything at secondhand—I shall be gloating over that which has been forgotten in London!" The sky wore a bleak, mottled appearance, and the weather was very squally. Gusts of a keen north-easterly wind swept searchingly past us, accompanied with occasional hail and rain, and made us very soon regret having taken outside places. I had a large blue cloak—two, in fact, made into one—with an ample cape, which, hood-like, I threw over my head when the weather was sharpest, and so in a considerable measure sheltered myself from the sleet and rain and cutting wind. Q. had an old greatcoat, and an immense "comfortable" round his neck. He and I sat with our backs to the horses. Next to him sat a man having the appearance of an elderly commercial traveller. Opposite to me sat the guard on a pile of coats and Mackintoshes; next to him sat two men of humble appearance, who were going, it seemed, only half way. As the weather became more and more disagreeable, the guard gave us all a couple of thick greatcoats to spread over our laps; but they were insufficient to keep my legs warm, for the wind

* A recollection of the following sensible observations it was that prevented me from ever resorting to the use of spirits on such occasions:—

"I may here allude to the common practice of 'taking a dram' of some kind of spirits before exposure to cold, a practice both foolish and dangerous; the stimulating effect of the spirit soon goes off, and is followed by a degree of languor proportioned to the amount of stimulation. This is the state in which the body is most easily chilled; the secretion of the skin most easily checked; in which the person is most liable 'to take cold,' and, if he is exposed to the influence of cold after the stimulating effects have subsided, the chances are very strongly in favour of his suffering from it. Spirits

rushed through below wretchedly. Our umbrellas were next to useless, the wind was so high, but my cape did me good service on the occasion of one or two violent hail-storms. By the time that we had got about twenty miles we were quite benumbed with the cold; and whenever the coach stopped to change horses Q. and I jumped down and ran on as fast as we could to warm ourselves again. The other passengers had, as frequently, recourse to brandy, and brandy-and-water.*

When the guard entered to summon us off, we each paid ten shillings to ride the remainder of the journey inside. There was only one passenger within beside ourselves—a respectable gentleman, a West Indian; with whom we gossipped pleasantly enough. How I felt for those outside! The night was clear and bright, but, oh, how cold! We got on very comfortably, except that the coachman, at one of the places where we changed horses, put inside an elderly woman—apparently a friend of his—who had on her lap a small basket, whence issued an odour like that of a fowl decomposing,—and which was so disagreeable as to require opening the window, cold as it was. Then she would *talk*! I, who was her *vis-à-vis*, answered her only in reluctant, ungracious monosyllables, being very sleepy—"Dear!—Ah! Yes!—Indeed!" wishing her all the while anywhere but where she was. At length she kindly ceased, and we all seemed dropping into a nap; I, at least, was fast forgetting

ought not to be taken before such exposure, unless the person is to be exposed but for a very short time, or unless the dose is to be repeated as often as the effects of the previous dose begin to subside. Coffee does not seem liable to this objection; its stimulating effects are much more lasting; and its warming effects seem to me to be even greater, and the subsequent languor is certainly less. Its cordial effects—the duration of the stimulus it affords—was, I believe, first noticed by Dr Rush, in his 'Inquiry into the effect of ardent spirits.' He says that he once knew a country physician who made a practice of drinking a *pint of strong coffee* previous to long-continued exposure to cold, and found it more cordial to him than spirits in any form."—ROBERTSON *on Diet and Regimen*, pp. 44, 45.

the woman opposite and her abominable basket, when—a thought suddenly flashed across my mind—"Good heavens!—*My wig!*" I exclaimed, with a start.

"Eh!—what—what's the matter?" inquired Q., startled out of his doze.

"Q., my wig! my wig!"

Our West Indian friend laughed, and said to Q.—"He's dreaming!"

"What is the matter?" inquired Q.

"Alas—I've certainly left my wig behind after all!"

"Your wig—of all things!"

"Yes—my wig!"

"You don't say so!" pointedly exclaimed our West Indian, good-naturedly. He could have had no notion of the nature of my calamity.

"La, sir, excuse me, but you seem to have a good enough wig on *now*; what's the use of two?" inquired the woman with the stench.

"What shall I do!" I exclaimed with a sigh of vexation.

"How do you know," said Q., "that it is not in your portmanteau?"

"Oh, I am sure of it; I now recollect where it must be—in a place that would be unlikely to occur to us in the hurrying of packing up. It is lying on the top of one of the bookshelves in my study! How very—very provoking! I recollect now seeing my gown lying along the top of the things in the portmanteau—I wonder it did not suggest!"

"Oh, now I see what you are, sir; you're a counsellor, sir, ar'n't you?" politely inquired the woman with the stench.

"You are in a fix," quoth the West Indian, with a giggle—"that is, if the *wisdom's in the wig!*" I could not just then exactly relish the joke, or admire the taste of it. What was to be done? Visions came o'er me of the crowds of clients who would besiege my lodgings with armfuls of briefs as soon as my arrival in Liverpool should have become known—the court opening on the next morning—and I wigless! an object of which the judge could not take judicial notice! He could not see or hear me! And if

so, what was to become of the interests of my numerous clients? After we had fully discussed the matter, it was agreed that the best thing I could do would be to get out for a few minutes at Coventry, which was then about eight miles off, and if possible send off a line to town, in time for the mail, which would pass through Coventry about twelve o'clock, on its way to London. If I succeeded in doing so my letter would be delivered on the ensuing morning at ten o'clock; the wig could be despatched by the three o'clock coach, directed to me at Liverpool; and thus I might find it awaiting my arrival. But then, again—suppose my wife should be from home! For I recollected that she had talked of going immediately to spend a day or two with a friend at some distance from town; or suppose she should be unable to find my wig;—or suppose, after all, it should be at that moment in my portmanteau—how could I ascertain this latter fact without losing the opportunity of rectifying the error by the first coach, if it should turn out that my wig was *not* there? Titillated by these pleasant possibilities I reached Coventry, and, the moment that the coach stopped, jumped out, ran into the booking-office, and scrawled off the following, which, as pleasing evidence of my thoughtfulness, my wife has preserved:—

"*My wig!*—Forgotten!!—In the tin box, on the lowest shelf of books in the study. Tie it up securely—direct it distinctly to '——— on the Northern Circuit, at the Adelphi, Liverpool;' accompany the servant with it, by two o'clock, to the Swan with Two Necks, book it, and pay the full carriage on to Liverpool. Herein fail not, as you love me. Yours, X. Y.

"Coventry, half-past nine, P. M., Addressed—'To Mrs X. Y.; or any of the servants.'"

Having secured its due transmission to the post-office, and thanked the civil booking-officer, I re-entered the coach, somewhat relieved from my anxiety. The chattering woman with the stench had gone; so we all began

to doze and sleep; for where is there a better incentive to sleep than rolling smoothly along inside a coach, in the dark, and when you have been travelling the whole day? For a while I fixed my eyes on the lantern nearest me, shedding its dusky circumscribed light over the empty high-road, which alone it rendered visible, and nothing was audible but the monotonous clattering tramp of the horses and dull rumbling of the coach wheels; I became gradually less and less sensible both of the one and the other—and at length—saw, and heard, and thought of nothing at all.

I was roused from sleep some time afterwards by hearing the voices of persons shouting and swearing violently. I found that the coach was standing opposite a public-house, where we changed horses; and Q. informed me of what was going on. We had been waiting there upwards of a quarter of an hour; for, as the two leaders were standing ready to be harnessed to the coach, one of them took it into his head to bolt off towards Birmingham at his top-speed. The other, as soon as he saw the ostler pelting after his companion, turned round—the droll brute!—and scampered off, similarly attended, in an opposite direction; as if it had been a trick concerted between them! You should have seen the fat old owner of the public-house at the time when this happened! He was standing, said Q., against the door-post, leaning on a sort of crutch, having apparently the gout—and shook his cane-stick, and cursed and swore after the horses “errant” in ludicrous and impotent rage. In about five minutes’ time the first horse was brought back; and the already winded ostler, after securing it, had to start off again in search of the other! He was gone so long, without any signs of returning, that a third was ordered to mount the first fugitive and ride after the second! This was the state of things when I awoke. The first words which I heard the old man utter, after stretching his head and straining his ear in the direction taken by the last-mentioned horse,

were, “I can’t hear ‘em! Curse me, if I don’t think the brute’s got up into a tree, and hid hisself! Lord, I only wish I had ‘em here!” said he, shaking his stick with direful significancy.

At length, however, the horse was brought back again, having been, it seemed, a long way up the road; and, after waiting for upwards of twenty-five minutes, we again set off on our journey, Q. and I consoling ourselves with the reflection, that *this* sort of thing, at all events, could not happen on the railway. We reached Birmingham about half-past eleven; and, as the coach put up at the *Swan*, and the hour was so late, and our stay in the town so short, we did the same—though we had purposed going to the *Hen and Chickens*. We were soon seated in an excellent coffee-room beside a roaring fire: and Q. and I, together with our West Indian companion—the only tenants of the room—having partaken, with infinite relish, of coffee, toast, and collared tongue, and chatted together for about half an hour about snakes, slaves, and sugar, retired to our respective rooms. I slept like a top till nine o’clock the next morning, and rose refreshed.

* * * The rain still came down steadily, and therefore we thought it best to return to our hotel, especially as we had letters to write. My wig had been bobbing before “my mind’s eye” fifty times during the day. Would it arrive in time, and safely? Suppose the man at Coventry, though fee’d for his trouble, had neglected or forgotten to put my letter into the post—or suppose my wife to have gone from home, and the servants to be unable to find the wig, or to take proper means for sending it on, as directed—or suppose—but it was useless to speculate. I wrote off a long letter home, and then we dressed and set off to dine with our friends, as we did right pleasantly.

I rose at half-past six o’clock in the morning—the train starting from a place two miles off at eight o’clock. It was bitterly cold, and the snow was fluttering down fast and thick. I was in the coffee-room about seven, and

found it crowded as on the previous morning by travellers, most of whom looked cold, and wearied, and hungry. As before, too, I had to wait a considerable time before I could get my breakfast. I had barely finished my second egg and cup of coffee when the omnibus which was to convey us to the railroad was announced. We hurriedly discharged our bill, threw our cloaks around us, and succeeded in getting to the omnibus just as, being full, it set off. We were obliged, therefore, to have a fly, and stood, while it was preparing for us, by our luggage at the door, in the cold and snow, exclaiming against our constant ill luck. We reached the railroad station, however, in good time; and having in our turn—for there was a crowd of applicants—paid a guinea a-piece for ourselves, and fourteen shillings for the servant, for which we received tickets, numbering both our carriage and the particular seat which we were to occupy, we went forthwith to the train—i. e. a series of the bodies *—as they seemed—of handsome and commodious stage-coaches, hooked together—say fourteen of them—each containing ample room for six passengers, the seats being separate, and which, being also numbered, secured regularity and a good understanding as to their rights among the passengers. This circumstance I learnt thus:—"Sir, I beg your pardon," said a gentleman entering, and looking at me and the seat I had chosen, "but I am fifty."

"Really, sir, I don't understand," I replied, with a smile, and great surprise; "what if you *are* fifty?—you don't *look* as much."

"Oh, my seat is number fifty—that's all," he rejoined, smiling in his turn, and pointing to the number, which glittered in brass letters immediately over me.

Of course I immediately surrendered my seat, and took one just opposite to Q., each of us sitting near

the window. This matter settled, I was getting out to look about me for a moment, when I heard the sound of a trumpet, and in a moment after saw a ponderous structure roll slowly and hissing past;—it was the engine, just taken out of his shed, and going to be attached to the train. He bore the startling name, "Sirocco," in large gold letters on his flank, and looked quite splendid in his polished brass and steel. He carried his food and water after him! Presently our tickets were called for; then a man went along from carriage to carriage, carefully fastening the doors and adjusting the handles safely, while another placed palm-oil on the wheels. There was none of the noise and bustle ordinarily attending the starting of a stage-coach; on the contrary, all was quiet and methodical. Again the trumpet sounded; and just at eight o'clock we felt a gentle motion, noiseless withal—and found that we had commenced our journey, but as slowly as we could well move at first. Gradually we quickened our speed till we had got fairly on our way and were clear of all interruption, when we began a rate of speed to me unprecedented. I let down the glass and put out my head to see the length and appearance of the train, but quickly withdrew it; for, what with the sleet, and the draught occasioned by the rapidity with which we were passing through the bitterly cold air, it was unpleasant enough. How dreary the country looked! I shut the window and wrapped myself up in my cloak, leaned back in my seat, and, together with Q., enjoyed for a while, in silence, the novelty of our situation and sensations. The motion was pretty uniform—gentle, slightly vibrating, with now and then a jerk: we almost believed we could have *written* all the way we went. So long as we looked only at distant objects, we did not seem to be going much quicker than in a fast stage-coach; but as soon as we looked at anything nearer—at the fence of the railroad, for instance—we became instantly sensible of the prodigious rapidity of our motion. It

* It must be borne in mind that this was written sixteen years ago, when railroads were, comparatively speaking, in their infancy.

was really painful to look down for a minute together. While I was thinking about the rapidity and pleasure of our rate and mode of travelling—

"Confound it!" exclaimed Q., "where's my umbrella?"

Certes we were a precious pair of travellers! He had left it at the Swan! I pointed significantly to mine, which I had in my hand; but he dashed my triumph by saying briskly—"Your wig, you'll remember!"

We stopped once in about every twelve or fifteen miles at "*Stations*," in order to give off or take in passengers, as also to let our good Sirocco drink—(a rare draught, merry monster! was his—a hogshead at least!)—and feed, when he snapped up several sacks of coals, apparently with great relish. What a digestion must be his! Well may his breath be hot and his system feverish! He generally panted a little at starting, but it soon passed off, and he ran the remainder of his journey without any apparent effort or exhaustion.

The word "*explosion*" flitted oftener through my thoughts, I must confess, than I could have wished, and always occasioned a momentary tremor, especially when my fancy would fly forward and image forth some such pleasant paragraph as—"Frightful Accident and Loss of Lives on the Liverpool and Birmingham Railroad, &c.—Boiler burst, &c., &c.; engine-man blown to atoms, his remains falling at several fields' distance. Amongst the sufferers, we regret to say, two gentlemen of the bar, going for the first time on the Northern Circuit, &c.—now lying in an utterly hopeless state at the Cat and Cockchafer, near Stafford; rejoice to add, no fault to be attributed to any one." &c. &c.

Have you never, my dear sir, experienced similar feelings?—or have you ever "*steamed it?*" I would give a trifle, if you had, for your description of it—of your feelings while being whirled along at such an astounding speed, and in such a novel manner. For about twelve miles we went at the rate of at least forty miles an hour! To prove the very great rapidity with

which we were flying along:—there was not a breath of air when we started from one of the stations; in a few minutes' time, happening to put my head through the window for a moment, I seemed to encounter a hurricane, and yet I observed that the small branches of the trees near the roadside did not move in the least. Q. sate lazily back in the corner; and since he could not put his head through the window to try the experiment, in order to show him how matters stood, I fastened one end of my pocket-handkerchief round my finger, and put my hand outside—when the handkerchief instantly flew and fluttered along, crackling like a pennant at a mast-head in a strong wind. Indeed, I was very nearly losing it. It was really painful to the eyes to look out ahead, the draught of air was so strong; and, as I observed before, it was dizzy work to look down immediately upon the road, and see the velocity with which we passed over it. Object after object—rails, posts, trees, &c.—glanced like light as we shot past them. On one occasion I had just thrust my head out, when something huge, black, tremendous, rushed hissing close past me, within a few inches of my face, and I fell back in my seat as if I had been shot. It was another train which was coming in the opposite direction. After only a few moments' pause, I looked out after it; but I protest it was almost out of sight. At one place there were several horses in a field near the road, all of whom, affrighted at our monstrous appearance, galloped off, except one, who remained behind, looking at us, I could imagine, with a sad air; possibly repeating to himself the words of our great poet—

—"O farewell,
Farewell the neighing steed!
And, oh! *you mortal engines!*—
Farewell! Othello's occupation's gone!"

When we had considerably abated our speed, I observed a droll evidence of the rapidity with which we were still travelling. A good-sized dog suddenly popped out of a shed on the roadside, and literally ran a race with

us for about two minutes, evidently as fast as he could lay his feet to the ground: but 'twas in vain; he could not keep abreast of the carriage opposite to which he had started; but carriage after carriage quickly passed him, till the whole train had got ahead of him, when he stopped—a mere speck in the rapidly-increasing distance.

* * * We had to go through a tunnel on reaching the confines of Liverpool, and which passes directly under the town. The engine was detached from the train on arriving at the mouth of the tunnel, and a rope, or ropes, attached in its place—but I did not see the process—by which we were to be drawn through the whole length of the tunnel! It was dreary enough work, plunged as we were, *instantly*, out of broad daylight into black Cimmerian gloom—

“Shut up from outward light,
To incorporate with gloomy night.”*

A lamp here and there shed its pallid, circumscribed light over the damp low sides and roof of the tunnel, which is very narrow, and so long, that if you put your head through the window you could not see light at either extremity—at least, only as a kind of speck. And there we were labouring heavily along, not at our former speed; nothing being heard but the dull rumbling noise of the wheels upon the rails, and the vapours striking so raw and cold, that we were forced to close the window; when divers pleasant thoughts crossed my mind. Suppose some accident should happen to us—just then!—the tunnel fall in, and bring half Liverpool about our ears;—we should not be dug out in less than three years' time, if any one had curiosity enough to set about such a task. Suppose some of the queer invisible mechanism by which we were drawn along should give way—in short, *how I hate tunnels*; especially tunnels a mile and a quarter in length!

* * * We drove first to the hotel, where I jumped out to inquire about my wig; and—joy indeed!—soon had in my hands such a little parcel as I de-

sired—plainly my wig-box “*carefully packed*.” The direction was in my good wife's handwriting—“*distinct*” enough, in all conscience—my name being in letters more than half an inch in length, and elaborately *painted* (as we called it at school), to prevent all possibility of obliteration or mistake.

* * * The next morning, about ten o'clock, we made our appearance in court.

Mr Justice Pattison, a patient, merciful, and very learned judge, presided in the criminal court, the first in which we made our appearance. The prisoner standing at the bar was charged with bigamy. He was a short young man of about five-and-twenty; of so mean and insignificant an appearance, that I wondered how he could ever have persuaded *one* woman to marry him—to say nothing of *two*! He had light close-cut hair, just like pig's bristles in colour and coarseness, *sans* eyebrows, beard, or whiskers; with sharp grey eyes, that peered about him anxiously from out of two rather large sockets. He stood patiently in the dock, with a kind of quaint composure, his hands disposed behind him, under the tails of a decent blue coat, while the clearest case in the world was being proved against him. When called on for his defence he gave a quiet *hem*! and in a calm, business-like way, with much self-possession and infinite quaintness, delivered himself thus:—

“Hem!—Sir, my Lord, and you gentlemen there,” (the jury) “this is the meaning of the whole thing, you see. I tuk a fancy to Sally—that's my first wife—'cause she and me was workers i' the same factory, and she *did* seem then a good girl, and likely to make me a good woife. So I says to her one day—says I, Sally, will't ha' me for thy husband if I'll tak thee for my woife? Yea, says she, I will—so we kip coompany for some toime, an' I giv her money and things, ye see, to make her loike me moore and moore—and I thowt she *did*; so we got married to each other. Well” (with this word, uttered with a kind of sigh, he commenced almost every sentence),

* *Samson Agonistes*, 160, 161.

"well, you see, sir, I got married, as I said, and we got on well enough for about a moonth, when one day, what d'ye think, gentlemen? I coomed hoam fro' my work, and behold Sally were gone. I wonder what's this, says I; and, putting together a few things as Sal had said to me now an' then, you may depend on't, says I to myself, Sal is gone whoam to her awld faither an' mither (they lived ten mile off, sir); for she were very p'tic'lar fond o' them; fonder nor she were o' me a dom'd deal; an' she'd often said to me, Tummas, faither an' mither must coom an' live wi' us. But I said na; if I've married thee, Sal, I han't married all thy family; which was the truth, gentlemen, an' every one of you would ha' said the same. Well, a p'tic'lar friend o' mine and me talked the thing over together; and he says to me, 'Tummas,' says he, 'I'd go arter Sal, and bring her whoam again; for if thee's married a woife, thee's a reet to ha' her live wi' thee, and I thowt the same."

"To be sure you had—you were quite right," interposed the Judge, who seemed listening to his statement with some interest; "go on."

"Well, I set off directly, an' walked the whool way there an' back, wi' only tenpence i' my pocket, and toired and hoongry I wer, I reckon, when I coomed whoam again. Well, I saw Sally, sure enough; and I says to her, in a very proper way (if you'll b'lieve me), 'Sally, is this good o' thee? Arn't thee my laful woife? And an't I a reet to ha' thee?'—'Na, na,' says she, 'I won't coom back, without faither and mither coom wi' me,—an' she stuck to this, an' we'd a good deal o' talk about the matter, an' she abused me, and so did t'ould ones, and they said I might go back, for Sal shouldn't go wi' me unless all went togither, an' lived loving-loike togither. I warn't going to do *this* neither, any how; so I went whoam without her, an' did my work as usual. Well, however, in a week's toime Sally coomed back, and I thowt she'd thowt better on't, an' were going to live comfortable and proper-loike wi'

me. Well, she were reet loving wi' me for some toime, when one day, to be sure, I found she'd pawned and sold a' my things, an' gone off wi' money to t'ould ones agin!"—

"Theer't leeing, Tummas!—theer't leeing, an' thee knows it," suddenly squealed out a female voice from the further end of the court. "I'm thy laful woife, an' I've got the 'tificate of our marriage with me here, thou leer!"

She was soon silenced, and the prisoner calmly proceeded:—

"But Sally coomed back again when the money wer all gone, and what a loife she did lead me, to be sure! She tuk to drink, and sold all my things to get it, even a noice silver watch, that had been giv me by my faither—all went for drink. She went on i' this'ns for about a year, gentlemen, and I got toired o' my loife. Sometimes she'd come an' live wi' me, and sometimes not; I doan't say Sally kep coompany wi' other men, but she wor no coompany to me. Well, at last I says to her—'Sally, wil't a live wi' me loike a wife should, or wil't a not?' 'Na,' says she, snapping her finger. 'Well then,' says I, 'coom before a magistrate, and let's get parted in a laful way.'"

"*Get parted in a lawful way!*—What do you mean by that?" suddenly interposed the Judge, with a kind of stern curiosity.

"*Get divorced*, sir, accordin' to la."

Mr Justice Pattison leaned back, with an air of mingled surprise and pity.

"Well," added the prisoner, after a short pause, "Sally wouldn't do one thing nor t'other—she'd neither live wi' me nor stop away—leastwise, whenever she did, it were only for mischief, to pawn and sell my goods, d'ye see. So at length I says to her—'Sally, since thee won't part lawfully from me, I've done wi' thee, an' I'll part wi' thee; and since thee doan't know what a good husband is, I know them that does, an' I'll give thee leave, once for all, to go to thy awld faither an' mither—an' marry 'em, if thee loik'st—but I've done wi' thee.' Well,

I went and told all this to my present woife."

"Your present wife! She *isn't* your wife," interrupted the Judge.

"And I said to her," continued the prisoner, imperturbably, "will thee object to marry me, an' live wi' me, and be a good woife? And she didn't say me nay; so we got married, an' we've lived very different-wise to Sally and me. So I thowt I'd a reet to do it; and this second woman's my woife; and Sally isn't my woife any longer, an' that's the truth o' the whole matter, and I've got nothing more to say, gentlemen."

All this had been said in a firm, earnest, respectful tone and manner, which satisfied *me* that the prisoner had been telling the truth; and if so, he was, indeed, to be pitied. If it were all false, then he must be a clever scamp to have been able to keep up such a plausible consistency—such a *vraisemblante* air—throughout. Some letter was handed up to the Judge in favour of the character of the first wife, whom it represented to be a sober and industrious woman. It was also admitted that the prisoner had fairly told the woman whom he had last married all that he had represented himself as having told her. The Judge, having made some just remarks upon the deplorable ignorance on the subject of marriage and divorce which seemed to be evinced by the prisoner, and which he sincerely hoped were not prevalent notions in those parts, instructed the jury that their verdict must of course be *guilty*, as the prisoner had confessed all that he stood charged with. He was immediately, therefore, found guilty. The Judge pointed out to him fully and distinctly the heinous nature of the offence of bigamy, and the utter absurdity of his notions respecting the relation of marriage, and the mode of dissolving it. He might be transported for what he had done; but as he seemed to have acted ignorantly, and had, especially, frankly told the woman whom he called his second wife of the fact that his first wife was living, and as he had already suffered several months' im-

prisonment since his committal to gaol, his Lordship thought the ends of justice would be answered by the infliction of a lenient sentence—that of six weeks' further imprisonment. He was then removed from the dock.

* * * *

Can an observer of human nature have a richer field laid before him than a Court of Criminal Justice? Amongst mankind there is nothing so solemn and affecting as—startling adumbration of *hereafter*!—man sitting in judgment upon his fellow man, searching, as far as his means will allow him, into the hidden springs of action, protecting innocence from the imputation and consequences of guilt, detecting and inflicting proportionate punishment upon guilt, even to the taking away of life itself! There, at the bar—all eyes anxiously settled upon him—stands, in terrified or sullen silence, an individual whose conduct in a particular transaction is the subject of inquiry; who knows, and probably *alone*, among men, knows that he is guilty of the crime with which he stands charged: one word from whose damp and rigid lips would instantly clear up the whole mystery, supply the essential link of evidence, throw light on the darkest train of circumstances, and reconcile the most discrepant and inconsistent facts. He stands cold and benumbed within the panoply of legal protection against self-crimination—knowing that not a sign or a syllable can be extorted from him. His heart, nevertheless, suddenly shrinks—the blood deserts; for a moment, his flushed cheek—as his guilty soul feels that his pursuers are pressing, though in the dark, closer and closer upon the truth of the transaction! He is, perhaps, inwardly cursing himself for his folly in having said or done, or omitted to do, something while about the perpetration of his crime, which his accusers have got hold of, and are pressing home upon him, and upon his jury, with dreadful strength of inference and conclusion. And there is his judge, well versed in such inquiries—the occasional glance of whose practised eye, which he *feels*

upon him, shoots a thrill of terror into his soul, for he knows that he has *found him out*, and that a few words of his will presently clear away the previous doubt and uncertainty that may be felt by the jury, who, charged with the issues of life and death, may soon utter the fearful word—

"That summons him to heaven or to hell!"

Such is an imperfect expression of the thoughts which were passing through my mind when, one morning, a little after nine o'clock, I entered the Crown Court, which was crowded to suffocation; but the only sound that met my ear was the voice of counsel stating to the jury the facts of a frightful case of murder, while he pointed, as he went on, in illustration of his statement, to an elaborate model of the premises where the alleged crime had been perpetrated. At the bar stood he whose life depended on the issue of that day's inquiry. He was a young man, apparently four-and-twenty years old; of average height and build, with light hair, rather protuberant cheek-bones and upper-lip. His countenance wore an air of mingled sullenness and anxiety, but its general expression and character would not have led me to imagine him capable of committing such crimes as he was charged with. He was dressed respectably, in a blue body-coat, with brass buttons, a black stock, Valentia waist-coat, which was very open, displaying a full plaited shirt-front. He stood at about a foot's distance from the front of the dock, holding a coloured silk pocket-handkerchief between his closed hands, from which he sometimes slowly wiped the perspiration—a posture which he never varied during the whole time of his trial. He seemed a young man of slow and dull feelings, which consequently he had little difficulty in controlling. He never raised his eyes towards the jury, judge, or witnesses, and only once or twice evinced any emotion; drawing a long heavy breath, and his cheek flushing, as one or two of the most striking points of the evidence made their appearance—to him probably

unexpectedly. His name was Hill; and he stood charged with having committed the threefold crime of murder, rape, and robbery, upon the person of an elderly female, one Betty Minshull, at Warrington, under circumstances, many of them, of course, unfit for detail—all of them of horrid atrocity. One's flesh crept as one looked at the man standing so near us, and supposed him capable of committing some of the acts with which he was charged. The evidence against him was entirely circumstantial. One of the witnesses proved an admission to him, by the prisoner, of his having committed two of the three offences of which he was accused; and it was when this was being deposed to that his cheeks suddenly flushed all over. He had, probably, till that moment, forgotten having made such a damning acknowledgment.

Betty Minshull was, if I recollect rightly, the landlady of a small public house, in one of the outhouses of which her body had been found early one morning—death having been effected by strangulation. It was proved that, late on the preceding night, the prisoner had been at the public house; that he was the last of the few visitors who had then been there; and that she had, good-naturedly, *given* him a glass of ale which stood on the table just as he was going. Shortly afterwards a woman living in one of the adjoining houses heard violent screams issuing from that quarter of the premises in question where the body had been discovered. They were at first loud and violent, but became gradually fainter till they ceased. Though these sounds had surprised the witness, they had not sufficiently alarmed her to induce her to suspect anything so serious as turned out to have taken place; so she did not rise from bed to inquire about them. On the morning of that day the prisoner had met a man whom he knew, and whom, with a strange and fatal communicativeness, he told a part of what he had been doing; that he "had been having a *lark* with Betty Minshull"—

and had left her asleep, having first taken out of her pocket some money, a knife, and a snuff-box; that he had thrown the last article into a mill-pond in the neighbourhood of the spot where they were then standing: It was subsequently searched, on suspicion being excited against Hill—and discovered lying at the bottom. The knife he had given away. Both of them were produced in Court, and clearly identified by one or two of the relatives of the unfortunate deceased as having been her property. The prisoner evinced no emotion when they were handed about, with serious scrutiny, between the Judge, the jury, the witnesses, and the Bar. His demeanour throughout appeared to me that of a man consciously guilty, and deserted by hope. One of the witnesses was the head constable, or keeper of the house of correction—I forget which—at Warrington; and he spoke to a most important examination by himself of the prisoner, when first brought into his custody. The prisoner's counsel having elicited the fact that the witness—a huge, brawny, overbearing-looking fellow—had conceived himself entitled to examine the prisoner, with a show of authority for doing so, and closely and sternly—and now came to state the results, most important and even decisive, of the answers so wrung from the prisoner,—

"Do you mean to say, sir," sternly interposed Mr Justice Pattison—turning towards him, "that you presumed to examine the prisoner at the bar as soon as he came into your custody?"

"Yes, my Lord, I did," he replied, with a confident air, "and can state exactly"—

"Then let me tell you, sir," interrupted Mr Justice Pattison, indignantly, "that you have acted with the highest impropriety, contrary to the law of the land—and have taken a shameful advantage of your situation. How dared you to do so, sir? Pray is this a *practice* of yours?"

"Yes, my Lord, it is," replied the witness, doggedly, but with a sadly crest-fallen air.

"Then I tell you, sir, that I have a very great mind to cause you to be dismissed immediately from a situation which you don't know the duties of. You have been guilty of misconduct in your office, sir. You ought to know that the law gives you no authority whatever to ask a single question of any prisoner committed to your custody, with a view to finding out whether he is guilty of what he is charged with. God forbid, indeed, that persons of your description should ever have such a power. Your duty is to keep them safely, and not to abuse your power by *worrying* them into confession, and extorting from their fears matter which you may afterwards come here, as you do this day, to swear to against them. If a prisoner *volunteers* a confession, a statement, you may hear it, and afterwards state it here; but at your peril ever again presume to continue your present cruel and oppressive practice: Do you hear me, sir?" he sternly added, observing the sullen conceited air with which the fellow listened to the merited and dignified rebuke inflicted upon him.

"Oh, yes, my Lord." The tone in which this was said did not escape the Judge.

"I am by no means sure," added his Lordship, "that I shall not even yet feel it my duty to recommend your dismissal from your present situation."

"Then I hope, my Lord, you will not allow this examination to be given in evidence?" inquired the prisoner's counsel. The prisoner's heavy, gloomy eye was lifted for an instant anxiously upon the Judge, on this question being asked; but his Lordship, after repeating his opinion of the improper manner in which the evidence had been obtained, observed, with a manifest reluctance to such use of evidence so unfairly obtained—"Why, yes,—they are, nevertheless, *admissions* of the prisoner, and I do not think myself warranted in altogether excluding them; but I shall take care to remark upon them to the jury."

The prisoner's eye was instantly

cast down, and his chest heaved with a long, deep-drawn sigh. After a strong chain of circumstantial evidence had been laid before the jury, the prisoner's counsel addressed them on his behalf. What could he say? He had no witnesses to call! The only point he attempted to make was, that though the prisoner might have been guilty of two of the three grievous crimes charged upon him, yet he had not intentionally, or even knowingly, occasioned the death of Betty Minshall; pressing upon them, with much energy, the statement of the prisoner which had been given in evidence, that "he had left the deceased *asleep*;" and also urging, for the honour of our common human nature, the incredibility that the prisoner, or any one living, could have been guilty of one of the atrocious acts with which he was charged. The Judge then summed up; stating it to be "perfectly settled and unquestionable law, that all homicide is *presumed* to be *malicious*, and amounts to murder until the contrary appears in evidence—which must be made out by the prisoner to the satisfaction of the Court and jury. It was for them to say whether they thought that the deceased had come by her death in consequence of any felonious act of the prisoner; and if so, he was clearly guilty of murder, although he might never have intended it, or thought it possible to have been the result, or have been aware of it. Of this there was not the slightest doubt." His Lordship then, with great patience and perspicuity, recapitulated and commented upon the evidence; and, though he had done so with the most rigorous fairness, it was clear to every one what the issue must be. The jury withdrew to consider their verdict, and the prisoner was removed from the dock till their return. They were absent for more than an hour; and as one of them was a Quaker, we began to suspect that the well-known repugnance of that sect to the shedding of blood afforded a chance to the prisoner of their verdict mitigating his crime into manslaughter. Immediately on the former one retiring, another jury

was sworn, and another prisoner placed at the bar.

The prolonged absence of the jury greatly strengthened our above-mentioned suspicions. What a dreadful interval must that have been to the prisoner! At length it was announced that the jury were returning into court to deliver their verdict. "Remove this prisoner, and place John Hill at the bar!" said the Judge, as I fancied, slightly changing colour. I am sure that I did, especially when I saw the prisoner led forward by two of the officers and placed in front of the dock to hear his doom. He stood exactly in his former attitude, with his handkerchief in his hands; but his face was turned, and his eye directed with dreadful anxiety to the spot where his jury were collecting; in whose downcast faces, as they one by one made their way through the breathless crowd, he too plainly read his fate. His chest heaved several times slowly, while he endured the agonising suspense occasioned by the jury's names being called over, and answering to them. As soon as the twelfth had responded—"Gentlemen, are you agreed upon your verdict?" inquired the officer of the court; "do you find the prisoner at the bar *guilty* or *not guilty*?"

Amidst profound silence, the foreman pronounced the fatal word—"GUILTY." My eye was fixed at the moment on the features of the miserable wretch whom that word had doomed to a speedy and ignominious death. It blanched his countenance; his eyes drooped, and he leaned heavily against the two officers who had led him in, and then stood close behind him. Immediately on the foreman's pronouncing the verdict, the Judge placed upon his head the ominous black velvet cap, and with much solemnity, amidst the breathless silence of the Court, thus addressed the prisoner:—

"John Hill—After full and anxious consideration, the jury of your country, upon which you put yourself for your trial, has found you guilty of the crime with which you stood charged. I am, and every one present, yourself

even, must be satisfied that the verdict is a just one. You stand convicted of the threefold crime of murder, rape, and robbery; and you must die. There is not a ray of hope for you on this side of the grave; your enormous crime has rendered you unfit to continue any longer among your fellow-creatures. I charge you to cherish not for an instant the slightest expectation of mercy; it cannot, it will not be extended to you. The interval between the present moment and your death, an interval which the law has lately mercifully extended, I implore of you to spend in constant prayer to Almighty God for His forgiveness, through repentance and faith in your Saviour Jesus Christ. His mercy you *may* obtain.

"I do not intend to harrow up your feelings by dwelling upon the details of your crime; they have horrified all who heard them, and you must know it. It is enough for me to discharge the awful duty which the law has imposed upon me—reminding you, unhappy man, once more, that your moments on earth are numbered, *and very, very precious to you.*

"The sentence of the court upon you is, that you be taken from the place where you now are, to the prison whence you came; and thence, on some day to be hereafter appointed, to a place of execution, where you shall be hanged by the neck until you be dead; and that your body be buried within the precincts of the prison."

As these last words were uttered, the prisoner, whose face had become ghastly pale, and whose eyes had closed, leaned heavily against the officers who stood behind him, and who led him down, apparently stupefied, as soon as the judge had ceased speaking, out of the dock into the prison. He was executed about three weeks afterwards, and died with firmness and penitence, denying, however, that he had intended to cause, or was at the time aware of the death of his victim.

I had never before seen sentence of death passed. It is a most solemn and painful scene. Mr Justice Pattison discharged his trying duty excellently

well. His words were few and weighty; and his manner was characterised by simplicity, firmness, and feeling.

There was tried, some days afterwards, for forgery on a grand scale, a man named Kinnear: whose name had made many a merchant's heart ache.

He came originally, I believe, from Glasgow, where, as well as at different periods of his career in London and Liverpool, he carried on an extensive business, and failed at the last-mentioned place, some seven or eight years ago, to an immense amount, leaving nothing whatever for his duped creditors. He had lived in great luxury and splendour, being a man of expensive habits and ambitious tastes. Finding it impossible again to establish himself in business,—to obtain credit in an ordinary and open course of dealing, his fertile invention and determined spirit pointed out to him more secret and tortuous courses. He organised a skilful scheme—a compact confederacy for the purpose of issuing fictitious bills, which soon made their appearance in all directions, especially in Birmingham, Liverpool and Manchester, and took in even the most knowing. His own name, of course, never appeared; but suspicion was at length roused, and pointed at him: diligent inquiries were set on foot after the alleged parties to these bills—individuals and companies; and the result was, that one fine day in October last, he was seized, together with a portmanteau, containing damning evidence of his doings, and committed to prison. One Jones, also, a hoary-headed scamp, his chief confederate, was arrested about the same time.

The court was crowded with mercantile men. When Kinnear was put to the bar I was much struck with his appearance. One cannot help a transient feeling of sympathy towards a man in the garb, and with the bearing of a gentleman, dragged to the felons' bar, however one may suspect him to be a scoundrel. He appeared upwards of fifty years of age; and his countenance decidedly betokened intellect.

His face and demeanour would have taken in any one. "Should you have suspected," whispered a friend to me, as we were both scrutinising the prisoner's countenance, "that man to have been a villain?" "Not I, indeed, nor would any one," I replied, and those lines of Medea's occurred to my mind, in which she laments that we have not equal facilities for detecting base coin and base men.

ὦ Ζεῦ, τί δὴ χρυσοῦ μὲν ὅς κ' ἰσθλὸς ἦ
 τεκέμεν' ἀνθρώποισιν ὅπασσας σαφῆ,
 ἀνδρῶν δ' ὅτ' ὅτε κακὸν ΔΙΕΙΔΕΝΑΙ,
 αὐτοῖς χαρακτηρὲς ἐμπίφουσι σώματι.*

His face was a little flushed as he was brought to the front of the dock, to stand where he knew that the murderer Hill had stood a short time before; and though he was evidently making a great effort to appear composed and attentive to what was going forward, and so grievously concerned him, yet the restless anxiety of his eyes, and momentary changes of his colour, showed that he was not insensible to the ignominy of his situation. He, who had lately been among the most active and eminent merchants of Liverpool, now stood charged with felony at the bar of the court, which was crowded, as he saw, by those with whom he had once been on terms of intimacy and equality, nay, superiority; of those who felt, as they looked at him, a keen and just resentment towards him for the prodigious frauds and injuries which he had committed upon men whose only fault had been their too easy confidence in his integrity. While the jury were being sworn, he looked at each of them with a scrutinising and anxious eye, but—to my surprise—challenged none of them. He had a number of papers with him, which he arranged carefully before him while the usual formalities were going on; and it soon appeared that he had retained no counsel, but intended to defend himself. Never was there a more signal instance of the folly of such a procedure, of the truth of the saying, that he who is his own counsel has a fool for his client. A layman to conduct his own defence

* *Medea*, 516, 519.

on a prosecution for forgery—one which is usually environed with technical difficulties, such as no one could reasonably be expected to comprehend or deal with but a lawyer, and an experienced one! *Quem Deus vult perdere prius dementat!* At length he was called upon, in the usual manner, to plead to the indictment. "Not guilty," said he, firmly and readily, thereby unconsciously waving the preliminary objection to the indictment on which, as it afterwards appeared, he had been mainly relying! Just before counsel rose to state the case to the jury, Kinnear, in a strong Scottish accent, and with an air of mingled anxiety and confidence, thus addressed the judge:

"My lord, I presume the time has now arrived at which I may take an exception to the form of the indictment?"

"An exception to the form of the indictment, do you say?" inquired the judge.

"Exactly so, my lord."

"No, you are too late! If you considered the indictment defective, why did you plead to it?" inquired the judge, mildly. "By so doing you have admitted that you have no ground for objecting to the sufficiency of the form of it. Why did you *plead* to it? You should have demurred."

Kinnear seemed thunderstruck. "You might have been better advised," continued the judge, kindly, "if you had chosen. You should have consulted some one who would have apprised you of the consequences of the step you have taken—of the proper time and mode of bringing forward and shaping your defence. Judging from your appearance, you must have had the *means* of doing so. Surely you have no one to blame but yourself." Kinnear, with earnest pertinacity, pressed the judge to entertain, at least to listen to, his "legal objection," and succeeded. "Well—let us hear it; if it be really a *substantial* one, you may hereafter avail yourself of it in arrest of judgment. I have looked at the indictment, and cannot give you much hope. But go on."

"I am charged, my lord," he com-

menced, with deliberate emphasis, "with forging a bill of exchange; and if I can prove the instrument, as described in the indictment, not to be a bill of exchange, I must be acquitted. Is not that so, my lord?" The judge assented. "Now, my lord, I have always understood, in my experience as a mercantile man, and it is laid down in all the law-books, that to a bill of exchange three parties are necessary—a drawer, a payee, and an acceptor; from which it follows that an *acceptance* is an essential part of a bill of exchange."

"If that is your point, there is nothing in it at all: and you must know it yourself, if you *are* acquainted, as you say, with commercial matters," said the Judge; "hundreds and hundreds of bills are noted and protested daily for *non-acceptance*; how could that be if they were not bills?"*

Kinnear, however, could not part with his "point" so easily—but urged it again and again with a most provoking pertinacity, till the Judge at once put an end to it by saying, sternly,—"even *his* patience being exhausted—"Silence, prisoner! what do you mean by standing chattering there in this way? I have heard you again, and again, and again, repeating the same thing, and have tried till I am tired to satisfy you of its futility. I cannot permit the time of the public to be any longer wasted. Let the case go on; you will have every proper opportunity of defending yourself."

* "A bill of exchange is a written order for the payment of a certain sum of money, unconditionally." Blackstone's definition is fuller, but to the same effect, pointing more to the origin of a bill of exchange,—"An open letter of request, from one man to another, desiring him to pay a sum named therein to a third person on his account;"—either definition excluding the necessity of an acceptance, and consequently disposing of the prisoner's objection. The instrument in question was in this form:—

"Three months after date pay to my order (without acceptance), £70.

"JOHN WATKINS."

"To the Flintshire Banking Company."

In this form (as far as the words in *italics* are concerned) are all bills drawn by the Bank of Ireland on the Bank of England. So, at least, it was stated in Court, though the prisoner denied it.

Kinnear, with an air at once dogged and chagrined, gave up the contest; and the counsel for the prosecutor proceeded to state as clear and strong a case against the prisoner as could well be made out. He had gone by several names, under all of which, however, he was most distinctly identified. He was arrested on one of the Manchester trains, the officer, at the same time, seizing, as already intimated, his portmanteau, which bore on it in conspicuous brass letters, "J.K.D." (*i. e.* John Kinnear Donaldson, the name by which he most frequently went, as was shown beyond all possibility of doubt). This portmanteau—alas, for him!—contained numerous memoranda in his own handwriting; the stamps with which the printed parts of the bills in question had been effected; correspondence with his various confederates, disclosing a complete organisation for swindling and forging; prospectuses of sham banks in his own handwriting. To what do you suppose his most vigorous fire of cross-examination was directed? To the demolition of all that abundant and impregnable evidence by which his portmanteau and its contents were connected with him, as they were, step by step, beyond all doubt, in defiance of all evasion or denial on his part. Never was anything more hopelessly absurd; he had clearly no notion of the true mode, especially the true *object* of cross-examination, either to break down his prosecutor's case, without, at the same time, prematurely disclosing his own; or to make out even by anticipation that which he intended to set up in opposition to it. His questions were all loose and miscellaneous; and yet, in form, they were neat and terse. It was plain that he had no clear notion of his position, no settled purpose in view. He produced no beneficial effect whatever, nor did he, in his speech to the jury, once allude to the matters which he had seemed desirous of extracting. In fact, his own questions had served only to strengthen the evidence against him where it was weak, and supply what was deficient in it.

I found that the prisoner confidently calculated on the prosecutor's being unable to show the handwriting of the alleged drawer's name (John Watkins) to be his, the prisoner's; guess his consternation when there came into the box a Frenchman who gave the most direct and decisive evidence against him! a man whom Kinnear believed at that moment to be far away in Prussia, and his name even unknown to the prosecutors!

Q. "Do you know the handwriting of Mr Kinnear?"

A. "O yea, ver well indid: I ave mosh reason to know it."

Q. "How do you know it?"

A. "How? Ave I not see him write ver many often times?"

Q. "Have you received letters from him?"

A. "Ver gret number indeed; too many."

Q. "Look at that bill of exchange, and say in whose handwriting is the name, 'John Watkins.'"

A. "O, yea, it is Mister Kinnear's, there can be no doubt."

Q. "Is it his natural and usual hand, or a feigned one?"

A. "No, no, it is a disguise; Mr Kinnear write two or tree hand when he choose."

Q. "Have you ever seen him write this kind of hand?"

A. "Ver frequent. There can be not any de least doubt that it is Mr Kinnear's handwriting—no, none at all."

Kinnear gave him a withering look, but did not dare to put a question to him.

At length the case for the prosecution closed, and the prisoner was called upon for his defence. Again he started his point about the misdescription of the instrument, as if he expected that it would tell with the jury, where it had failed with the Judge. He then proceeded to the body of his defence, such as it was. His chief point now was to make out that the Flintshire Banking Company (shown clearly by the prosecutors to have been a pure piece of fraud and imposture)

was being established *bonâ fide*, and had actually commenced doing business; that the *bonâ fides* of a newly-established joint-stock bank was not to be judged of by the smallness of its capital at starting, and cited several instances to show the truth of his assertion, that "small beginnings often made large endings." Above all, he should be able to show beyond all doubt that the man who had sworn that the name "*John Watkins*" was in his, Kinnear's, handwriting, had sworn falsely—that it was written by John Watkins himself, whom he should put into the box to prove it; and then he should, he apprehended, be immediately entitled to an acquittal.

"Indeed, but you are very much mistaken, prisoner," interposed the Judge, to whom Kinnear had looked, as if expecting what he had said to be corroborated from the bench. "You are not to suppose that if you address a bill of exchange to a person or a company that has no real existence—to a sham bank, for instance, which has been set up only for the purpose of giving currency to their fraudulent instruments, and then pass it off into the world—that it will avail you, even if a person calling himself John Watkins should come and swear that these words were in his handwriting. I mention this, only because you seemed to appeal to me, and I do not wish to mislead you by my silence. Go on, and call your witnesses."

"Well," replied the baffled swindler, quite chop-fallen, "I will proceed to prove my case. Call John Jones."

Who do you suppose this "*John Jones*"—his sole witness—was? The confederate already spoken of, who had been put up at the bar with Kinnear that very morning, and who was to be tried immediately after him on a similar charge! Here was a credible witness for you! I could hardly help bursting into laughter when I saw him led out of the prison into the witness-box in custody of the officer! by his sole testimony to neutralise all that had been already given, and secure

his friend's acquittal! Kinnear proceeded to examine him in a novel manner—by putting the speech which he had addressed to the jury into palpable leading questions, which were all, of course, readily answered by the witness just in the manner which Kinnear wished, neither the Judge deigning, nor the counsel for the prosecution thinking it necessary to interpose at all! He got the man to swear that his name was "John Watkins Jones," but that he more frequently dropped the last name, and passed as "John Watkins;" *why*, he left to conjecture. At length he came to his grand point.

"Now, Mr Jones, take that bill"—the one in question—"into your hands, and look at the name of the drawer."

"I have, sir," he replied, holding it in his hand, and looking at the prisoner, waiting for the next question.

"Now, tell us," continued Kinnear, confidently, "in whose handwriting are the words, 'John Watkins?'"

"IN yours, sir," replied the witness as confidently, not knowing the case which Kinnear had been presenting to the jury, but speaking, probably, in accordance with some former story concerted between them; Kinnear also forgetting, obviously—if such were the true state of things—his altered plot! He turned perfectly pale when this most unexpected and confounding answer was given; but, with a presence of mind and readiness worthy of a better cause, calmly continued,—

"Now, Mr Jones, when I wrote that, did I, or did I not write it *in your presence, and by your direction?*"

"You did, sir," replied the ready liar.

"By procuration?"

"Yes—by procuration."

"Can you write, Mr Jones?" inquired the Judge, half smiling at the farce that was being carried on by this pair of worthies, and was answered readily in the affirmative.

"Why did you sign by procuration if you could write, and were present?"

"I don't know, sir."

He made an absurd figure under cross-examination; disclosing such a scheme of villany between himself and the prisoner as even, in the absence of all other evidence, must have secured a conviction. The Judge summed up very shortly, and the jury almost immediately found him guilty. He heard the verdict with perfect composure. The Judge proceeded to pass sentence upon him; telling him that, but for the alteration in the law, lately effected by the lenient legislature, his life would have been that day forfeited; that such was his—the Judge's—opinion of the prisoner's guilt, that even had death been then the punishment of forgery, he should certainly have left the prisoner for execution. As it was, he would find the punishment inflicted upon him to be dreadfully severe; which was, that he should be transported beyond the seas for the term of his natural life. Kinnear listened to the sentence with an air of deep anxiety, but with calmness. He deliberately gathered up his papers, which seemed to have been, however ostentatiously arranged, of no manner of use to him; the officer tapped him on the shoulder, motioning him away, and he followed. Many curious stories are told of this most successful swindler. He once drew *and got discounted*, when he was in business at Liverpool, a bill for £80,000. It is now framed and glazed as a curiosity. I was told by a banker who knew it as a fact, that Kinnear, on the occasion of one of his bankruptcies, audaciously came to a meeting of his creditors in a carriage-and-four; and, on their mildly intimating to him that, under circumstances, a chaise and pair might have sufficed, he replied, with smiling *sang-froid*, "Gentlemen, my time, which is your time, is so very valuable, that I could not think of depriving you of a moment of it!"

He is now on his way to New South Wales, and I hope he may have health to enjoy his pleasant and novel situation, and the many gratifying thoughts and recollections it will occasion.

When I looked at him he brought to my recollection—not, however, from any *personal* resemblance—the figure of the ill-fated Fauntleroy, as I saw him standing, some dozen years ago, —with a high-bred air, a most strikingly gentlemanly figure and handsome features, which were blanched with agony and terror,—at the bar of the Old Bailey in London, for a similar offence; and for which, as you may recollect, he was shortly afterwards hanged, a most miserable spectacle. I think he must have been already dead when he was brought out upon the scaffold; he was certainly insensible, and obliged to be supported to the very last moment of the brief and frightful preparations.

The last trial of interest that I witnessed in the Crown Court was one which took place on the next day, or the day after. It was that of a man for the murder of his wife. He seemed about thirty-five years old, and was dressed in respectable mourning. He stood at the bar with an air at once of firmness and depression. He was a little under the average height, and his countenance rather prepossessing than otherwise. From the evidence in chief of the first two witnesses it would have appeared clear that he had been guilty of a most barbarous murder. On their depositions before the coroner a verdict of manslaughter only had been returned; but on reading them, Mr Justice Pattison had felt it his duty to instruct the Grand Jury to bring in a bill for murder; a step which seemed most amply justified by the evidence which the witnesses now gave. It appeared from their testimony that the deceased had been far advanced in pregnancy; that the prisoner had had some dispute with her—being a most violent man, they said—and knocked her down, her head falling against the sharp corner of a chest of drawers, which cut it open, and the wound bled profusely; and that, while she was thus prostrate and insensible, the prisoner furiously kicked and struck her repeatedly—death, on the same evening, or the evening after, I forget which, being

the consequence. As far as this evidence went, nothing, of course, could have been more brutal than the conduct of the prisoner; but, on cross-examination of the first witness, a little ill-looking old woman, the mother of the deceased, and who gave her evidence manifestly under the influence of the most bitter resentment towards the prisoner, the case began to assume a different aspect. It was wrung from her, after great prevarication, and also was established by other witnesses, that she had herself, on the evening in question, been drinking gin with the deceased, at the residence of the latter, a miserable cellar; that she had herself fetched five quarters of gin for the deceased on that occasion; that the deceased and the witness, at her request, had frequently pawned all her husband's clothes, and those of her children—whom she had once or twice sent to bed early in the afternoon, to enable her so to dispose of their clothes! That the prisoner was a pilot, a remarkably steady and hard-working man, and earned amply sufficient to enable himself and family to live in comfortable circumstances; but this accursed propensity of his wife's had beggared them, and driven them from their former comfortable dwelling to the wretched cellar in which had occurred the catastrophe then the subject of inquiry. That on the evening in question he had come home from the sea wet and wearied, but found that every article of his clothing had been pawned by his wife, and that his children were lying in bed almost naked, their little clothes having shared the same fate; and that his wife was drunk, as was also the first witness. Furious words naturally ensued; and it was under these truly exasperating circumstances that he had struggled with his wife, so as to occasion—but, it was clear, unintentionally—her fall; and it certainly did appear that, either while she was falling, or immediately afterwards, he had more than once struck her with some violence, but not in a way to have alone caused her death, which the medical evidence showed to have

been occasioned by the injuries which she had received upon her head, in falling upon the drawers, added to the effects of violent excitement and excessive liquor upon a person in her situation. The third witness brought forward against the prisoner was—alas!—his own daughter, a little girl about five or six years of age, decently dressed in black. When her name was called, the prisoner, with an agonised countenance, looked away from the spot where she was to stand; his lip quivered, his chest heaved; and, in spite of his efforts, the tears forced themselves from his eyes. Mr Justice Pattison observed his agitation, and seemed himself not a little affected when he beheld the little thing that, in obedience to the summons of the loud-voiced officer, was brought into court, and placed close beside him, to give evidence which might seal the fate of her father. She was so short, that he handed over to the officer the footstool he had been using, in order that she might stand upon it. She was rather a pretty-looking girl, and her face was sad and pale. She did not, however, cry, though her eyes seemed glued to the figure of her miserable father, who never once ventured to look towards her, and whose tears, silent evidence of the anguish he was enduring, fell frequently. In all other respects he preserved a stern composure throughout the proceedings.

"My child," said the Judge, I thought with a little emotion, as he bent down his ear to her,—“do you know that you have come here to speak the truth?”

"Yes, sir."

"And will you, my dear, speak the truth—and tell us all the truth, and nothing else?"

"Yes, sir."

"What will become of you, do you think, if you tell a lie?"

She paused; the Judge repeated the question; and she answered distinctly, "I shall be burned in everlasting fire."

"Where did you learn that?"

"The Bible, sir."

"Have you ever been at school?"

"Yes, sir, at the Sunday school."

"She may be sworn," said the Judge; and the oath was immediately administered to her.

Was not this, dear Christopher, a grievous sight to see? The little daughter called to give evidence against her father, on his trial for his life, for the murder of her mother! Though in a melancholy tone, and with a sad manner, she gave her evidence with great propriety, clearly and firmly. Her tiny voice could be heard distinctly in all parts of the crowded but silent court. She evinced, as was to be expected, a strong leaning towards her father; but she admitted that he had twice struck her mother when she was lying bleeding on the floor. She also stated that her mother had several times actually taken her—the little girl's—shoes and stockings off her feet, that she might pawn them for gin; and that she and the other children had been often obliged to lie in bed, because their mother and grandmother had taken away their clothes for the vile purpose above-mentioned! Who could listen to all this without feeling the deepest commiseration towards the unhappy prisoner? Till he had been hurried into the act with which he then stood charged, he had always borne an unblemished character as a quiet respectable man, who laboured hard to support his family, and who could have kept them in comfort but for his wife's ruinous propensities to drink. His counsel addressed the jury on his behalf with much earnestness, contending that, on the whole of the evidence, the prisoner was entitled to an acquittal, or, at least, to a verdict of manslaughter. The Judge, however, directed the jury that there was no evidence to support the charge of murder, but that the prisoner had been clearly guilty of manslaughter. He then recapitulated the evidence; and, after a quarter of an hour's consideration, the jury pronounced a verdict of manslaughter. He was sentenced to eighteen months imprisonment, with hard labour.

The only case in the Civil Court which possessed anything worth noticing here was a prosecution for a NUISANCE, instituted by the Corporation of Liverpool against a Mr Muspratt, the proprietor of some extensive works for the manufacture of *alkali* within the town of Liverpool. The alleged nuisance was thus described by the counsel for the prosecution (the present Mr Justice Cresswell):—"The works carried on by Mr Muspratt are for the manufacture of alkali, in the course of which two processes are necessary: they first of all manufacture sulphuric acid; and, using it together with common salt, they manufacture salt-cake, for the purpose of converting it into what is called black ash, or alkali, that being employed in the making of soap, as a cheap substitute for kelp, or Spanish barilla, which were formerly imported from foreign countries, and used in the manufacture of soap. I understand that the process by which this article is manufactured is so conducted as to discharge into the air, from the lower part of the works, more or less of sulphuric acid gas, and from the high chimney, in which the other part of the process is carried on, is discharged a large quantity of muriatic acid gas. No person can pass within sight of these works without observing, not only a quantity of black smoke escaping from the chimney, but also a white vapour, looking like a cloud of steam, which is carried along a considerable distance from it in clear weather, still remaining a compact body, not mixed with the air on either side. I understand that this vapour comes originally from the chimney in the form of muriatic acid gas, but, speedily combining with the moisture of the atmosphere, it assumes the vaporous state, leaves the gaseous state, and is driven along in the state of vapour, as a stream, whichever way the wind may blow, and, being heavier than the atmospheric air soon descends, producing the consequences which I will describe to you. In the first place, with respect to vegetation, I am told that it withers and destroys vegetation wherever it falls;

that the leaves become shrivelled up and embrowned by it, and ultimately fall; and, if it continues in that direction for a sufficient length of time, they will crumble into powder. Upon metals it has a peculiar action. Brass is speedily tarnished by it, and a rust, or rather a bright red rust, is produced by it, upon all metallic articles—fenders, fire-irons, and all polished metallic articles, are speedily rusted by it; so much so, that in half an hour after any metallic article is submitted to its action, you will find that it is entirely rusted. To the senses it is particularly disagreeable. There is a pungent, acid taste; it is extremely irritating to the lungs; it produces a coughing as soon as it is inhaled, and a smarting about the eyes. In short, it irritates wherever it comes in contact with the mucous membrane. You may easily imagine that all this is a source of great annoyance and of loss."

It was impossible to mix in Liverpool society without hearing complaints on all hands—whether well or ill founded—of the injurious effects here alluded to; and the greatest interest was excited by the trial; during the whole of which, lasting nearly three days, the Court was excessively crowded. Society, in short, took up arms against Mr Muspratt, and you may guess the result. He fought stoutly, however, desperately contesting every inch of ground. The prosecutors brought forward a host of witnesses to support the statement of Mr Cresswell; to prove that their health had suffered sensibly, grievously, in consequence of these hated "*works*;" and their property, of almost every description, had been also injured thereby to a very great extent. Pawnbrokers said this abominable gas played the mischief with their various deposits; nurserymen and gardeners, that it utterly blighted their fruit, flowers, shrubs, vegetables, and trees; dyers, that it discharged all their colours, and frustrated and confounded all their doings; cow-keepers, that their cattle languished and died—both their grass and their water being contaminated by this execrable gas.

There was, in short, a "*whole army*" of sufferers, if not of *martyrs*. What a singular conflict of testimony there was, to be sure! One class of witnesses swore that their fire-irons, &c. were constantly corroded; another, that *theirs*, though subject to the same influence, were "*always bright and fair*." One, that their furniture, the papering of their rooms, and clothes hung out to dry, &c., were immediately discoloured, and presently rotted; another, that though next-door neighbours, no such effects had been experienced—or, if any had, they were easily referable to other causes. One, that whereas, before they and their families had resided within the sphere of this pestiferous influence, they had been healthy, plump, and ruddy, they soon after became, and still were, diseased, lean, and sallow; another exactly reversed it, and swore that, if anything, their health had improved, and they had become fatter and ruddier since they had come within the magic circle of Mr Muspratt's influence. One scientific chemist demonstrated, by analysis and experiment, the deleterious properties of the gas; another, the well-known Dr Thomson from Glasgow, contradicted him. The one referred all the injurious effects which had been detailed by the witnesses clearly and unequivocally to the muriatic acid gas; the other denied it, and accounted for them by reference to the agency of simple atmospheric air and carbonic acid gas.

Forty witnesses were called for the prosecution, and forty-five for the defendant. It took two whole days to collect this enormous heap of contradictory evidence; and on the morning of the third, Mr Justice Coleridge summed up the whole to the jury with great judgment and perspicacity. I do not think that either party could have gathered from his address to which side his opinion inclined, so nearly did he hold the scale. The jury—a special one—retired, and after an absence of two hours and a half, returned into Court with a verdict of **GUILTY**; the consequence of which has been, and will be most serious to

the defendant, who must now give up his expensive works, and either pull them down, or convert them, if possible, to other purposes. This seems, however, but fair and reasonable; for why should one citizen benefit and enrich himself at the expense of his fellow-citizens, their comforts, property, and health? My own judgment, as that of an impartial listener, was satisfied that the case was made out against the defendant. It was exceedingly interesting, and repaid the attention with which I had listened to it. It commenced on Thursday, and terminated on Saturday, April 7, and as soon as I had heard the verdict I quitted the Court, to make arrangements for returning to town on the ensuing Monday.

Monday was the day appointed for opening the railroad between London and Birmingham, all of which had been completed except the middle thirty miles, which was to be passed in omnibusses; and the question with us was, whether we should avail ourselves of that opportunity, or content ourselves with the railroad to Birmingham, and then go on to London by coach. The latter was the course we determined upon adopting, for there were divers objections to the other, both speculative and practical; and we therefore took our places for Monday morning at half-past six, paying down on account £3. Most of our brethren had either preceded us, or dispersed to various sessions, which I had made up my mind not to attend.

* * * *

Despite, however, all our precautions, we barely escaped being once more too LATE. Our fly rattled down Mount Pleasant as fast as it could well go, but it struck six—sad sound to our too negligent ears!—as we drove into the railway station-yard, and we knew that the train started punctually; while we had yet to get our luggage out and put in, to pay the residue of our fare, and to get our tickets. We were in an agony of nervousness. Our luggage *would* get wrongly placed; then we had to get change for a ten-pound note, then

to shout to the people to say that we were ready, while those within the office were saying that it was our own fault, &c. Lo! just as we were counting over the change we had received, we heard a shrill startling sound—we cast our eye on the huge train—alas! the monster was moving—and while it was doing so, we hastily got into our appointed place—smack went the door, and in a moment we were under the tunnel, in whose gloom and silence we had leisure to recover from our flurry, curse our folly, and make good resolutions—as usual!

The morning was much finer than that on which we had come to Liverpool; and it was pleasant enough to be rattling rapidly along amid the cheering sunshine, instead of having our former melancholy accompaniments of wind, hail, snow, rain, fog, and sleet. We reached Birmingham by a quarter past eleven, having started from the tunnel at Liverpool at about twenty minutes to seven—a far quicker journey than our former one. Certainly railroad travelling is delightful, both from the advantages afforded by its surprising rapidity, and the convenience—not to say the luxury—of its accommodations. You have as much room as you can wish for: no ill-bred or ill-natured, or disproportionately-sized fellow-passenger can annoy you by encroaching on the limits set apart for you; the vehicle in which you travel is airy and commodious—you are at an amply sufficient distance from your opposite neighbours; and, really, what a thing it will be ere long to be able to calculate confidently upon a journey to and from London and Liverpool, in right pleasant style, and in six or eight hours! About half-past eleven o'clock—after taking a biscuit and a glass of wine—we got into the coach. Alas, how

“Cabin'd, cribb'd, confined, bound in”

we instantly felt ourselves! scarce room to shift the position of even a

limb without almost apologising to one's neighbours for incommoding them! As this was the day of opening the railroad, I soon found that a great struggle was to be made by our coachman to see whether he could not get into town “before the steamers.” He was a capital whip, and at the same time a cautious and safe one, and we went the whole way at the rate of twelve miles an hour. We caught a very striking view of the newly-opened railroad soon after quitting Coventry,—passing along over immensely high arches, constructed with an eye equally to taste and strength. The sides of it were lined with people awaiting the arrival of the trains. We caught, as we went on, occasional glimpses of the railroad as well in its incomplete as its finished state. About ten miles beyond the latter portion of it we passed about thirty or forty horses waiting ready to be harnessed to the omnibusses which were to convey the passengers from the end of the finished part to the Denbigh-Hall end; and, as might have been expected, a little bitter slang passed between our guard and coachman and the “steam people.” I rode outside for a considerable portion of the way, and very pleasant it was.

* * * *

After eating a hearty dinner at Stony-Stratford we turned inside, and rumbled off once more. We all of us fell asleep, being sufficiently tired with our long day's journey; and when I woke it was at half-past eleven o'clock, and we were at the Angel at Islington, with the crowd and hubbub then usual on the arrival or departure of a coach. In a twinkling, however, I got into a cab with my portmanteau, and in less than a quarter of an hour was at home, having thus returned safe and sound in wind and limb from my First Circuit!

Given from my Chambers, on the 8th floor of No. 37, Fig Tree Court, in the Temple, on the 10th day of this present June 1838.

SIR WILLIAM FOLLETT, KNIGHT,

ATTORNEY-GENERAL.*

THE disappearance from the legal hemisphere of so bright a star as the late Sir William Follett cast a gloom over the legal profession, and, indeed, over all classes of society capable of appreciating intellectual eminence. He died in his forty-seventh year; filling the high office of Attorney-general; the head and pride of the British bar; a bright ornament of the senate: in the prime of manhood, and the plenitude of his extraordinary intellectual vigour; in the full noontide of success, just as he had reached the dazzling pinnacle of professional and official distinction. The tones of his low mellow voice were echoing sadly in the ears, his dignified and graceful figure and gesture were present to the eyes, of the bench and bar—when, at the commencement of Michaelmas term, 1845, they reassembled with recruited energies, in the ancient inns of court, for the purpose of resuming their laborious and responsible professional duties in Westminster Hall. It was impossible not to think, at such a time, of Sir William Follett, without being conscious of having sustained a grievous, if not an irreparable loss. Where was he whose name was so lately a tower of strength to suitors; whose consummate logical skill, whose wonderful resources, taxed to the uttermost those of judicial intellect, and baffled and overthrew the strongest who could be opposed to him in forensic warfare? Where, alas, was Sir William Follett? His eloquent lips were stilled in death, his remains were mouldering in the tomb—yes, almost within the very

walls of that sacred structure, hallowed with the recollections and associations of centuries, in which his surviving brethren were assembled for worship on Sunday the 2d day of November 1845—the commencement of the legal year—at that period of it when *his* was, erewhile, ever the most conspicuous and shining figure, *his* exertions were the most interesting, the most important, *his* success was at once the most easy, decisive, and dazzling. Yes, there were assembled his brethren, who, with saddened faces and beating hearts, had attended his solemn obsequies in that very temple where was “committed his body to the ground, earth to earth, ashes to ashes, dust to dust,” where all, including the greatest and noblest in the land, acknowledged, humbly and mournfully, at the mouth of his grave, *that man walketh in a vain shadow, and disquieteth himself in vain; he heapeth up riches, and cannot tell who shall gather them!* Surely these are solemnising and instructive reflections; and many a heart will acknowledge them to be such, amidst all the din, and glare, and bustle of worldly affairs, in the awful presence of Him *who turneth man to destruction, and sayeth, Come again, ye children of men!*

When summoned from the scene of his splendid and successful exertions, Sir William Follett was unquestionably the brightest ornament of the British bar. Immediately afterwards the press teemed with tributes to his memory: some of them characterised by great acuteness and discrimina-

* *Blackwood's Magazine*, January 1846.

tion, several by exaggerated eulogy, and one or two by a harsh disingenuousness amounting to misrepresentation and malevolence. Nothing excited more astonishment among those who had thoroughly known Sir William Follett, than the appearance of these attacks upon his memory, and the bad taste and feeling which alone could have prompted the perpetration of them, at a moment when the hearts of his surviving relatives and friends were quivering with the first agonies of their severe bereavement; when they had just lost one who had been the pride of their family, the pillar of their hopes,—and who was universally supposed to have left behind him not a single enemy—who had been distinguished for his courteous, mild, and inoffensive character, and its unblemished purity in all the relations of private life. Certain of the strictures here alluded to were petty, coarse, and uncandid; and with this observation they are dismissed to oblivion. Sir William Follett had undoubtedly his shortcomings, in common with every one of his fellow men; and, as a small set-off against his many excellences of temper and character, one or two must be glanced at by any one essaying to present to the public, however imperfectly, a just account of this very eminent person. One of his failings formed the chief subject of vituperation—*vituperation of the dead!*—by the ungracious parties to whom brief reference has just been made; and consisted, in short, in the excessive eagerness to accumulate money, by which it was alleged that the late Sir William Follett was characterised. This charge is certainly not without foundation; but while this frank admission is made, an important consideration ought to accompany it in guiding the judgment of every person of just and generous feeling; and will relieve the memory of the departed from much of the discredit sought to be attached to it.

The life of Sir William Follett appears to have been, from the first, of frail tenure. Could he have foreseen the terrible tax upon his scanty physi-

cal resources, which would be exacted by the profession which he was about to adopt, he would probably have abandoned his intentions, justly conscious though he might have been of his superior mental fitness for the bar, and would have betaken himself to some more tranquil walk of life, which he might have adorned for a long series of years. He devoted himself, however, to the law, with intense and undivided energy; and, at an early period of his professional career, was compelled to retire for a time from practice, by one of the most serious mischances which can befall humanity—the bursting of a blood-vessel in the lungs. Was not this a fearful occurrence?—Almost conclusive evidence of the unwise choice which he had made of a profession requiring special strength in that organ?—Was it not justly calculated to alarm him for his future safety? And yet, what was he to have done? To have abandoned a profession for which alone he had qualified himself by years of profound and exclusive thought and labour? What Office would, under such circumstances, have insured the life of young Mr Follett, who, with such a fatal flaw in his constitution, was nevertheless following a profession which would hourly attack his most vulnerable part? Poor Follett! who can tell the apprehensions and agonies concerning his safety, to which he was doomed, from the moment of this—his first solemn summons to the grave? What had happened, he too well knew, might happen again at any moment, and hurry him out of life, leaving, in that case, comparatively destitute those whom he tenderly loved—for whom he was bound to provide—his widow and children. And for the widow and children of such a man as he knew that he had become, he felt that he ought to make a suitable provision: that those who, after he was gone, were to bear his distinguished name, might be enabled to occupy the position in which he had placed them, with dignity and comfort. Was such an illegitimate source of anxiety to

one so circumstanced, and capable of Sir William Follett's superior aspirations? Was it not abundantly justified by his splendid qualifications and expectations? Why, then, should he not toil severely—exert himself even desperately—to provide against the direful contingency to which his life was subject? Alas! how many ambitious, honourable, high-minded, and fond husbands and fathers are echoing such questions with a sigh of agony? Poor Follett! 'twas for such reasons that he lived with an honourable economy, eschewing that extravagance and ostentation which too often, to men in his dazzling position, prove irresistible; it was for such reasons that he *rose up early and went to bed late, and ate the bread of carefulness*. Had he been alone in the world—had he had none to provide for but himself, and yet had manifested the same feverish eagerness to acquire and accumulate money—had he loved money for money's sake, and accumulated it from the love of accumulation, the case would have been totally different. He might then have been justly despised, and characterised as being of *the earth, earthy*—incapable of high and generous sentiments and aspirations—sordid, grovelling, and utterly despicable. Sir William Follett had, during twenty years of intense and self-denying toil, succeeded in acquiring a very large fortune, which he disposed of, at his death, justly and generously; and how many hours of exhaustion, both of mind and body, must have been cheered, from time to time, by reflecting upon the satisfactory provision which he was making—which he was daily augmenting—for those who were to survive him! Who can tell how much of the bitterness of death was assuaged by such considerations! When his fading eyes bent their aching glances upon those who wept around his deathbed, the retrospect of a life of labour and privation spent in providing for their comfort, must indeed have been sweet and consolatory! Surely this is but fair towards the distinguished dead. It is but just

towards the memory of the departed, to believe his conduct to have been principally influenced by such considerations. All men have many faults—most men have grave faults. Is parsimony intrinsically more culpable than prodigality? Have not most of mankind a tendency towards one or the other? for how few are ennobled by the ability to steer evenly between the two? And even granting that Sir William Follett had a *tendency* towards the former failing, it was surely exhibited under circumstances which warrant us in saying, that “even his failings leaned to virtue's side.”

Connected with and immediately dependent upon this imputation upon the late Sir William Follett, is another which cannot be overlooked. He is charged with having made a profit of his prodigious popularity and reputation, by discredibly and unconscionably receiving fees from clients for services which he well knew at the time that he could not possibly render to them; in short, with taking briefs in cases to which he had no reasonable hope of being able to attend. This is a grave accusation, and requires a deliberate and honest examination. It is a long-established rule of English law, that barristers have no legal means of recovering their fees, even in cases of most arduous and successful exertion, except in the few instances where a barrister can be found who may consider it consistent with the dignity of his position to enter beforehand into an express agreement with his client for the payment of his fees.* A barrister's fee is regarded, in the eye of the law, as *quidam honorarium*; and is usually—and ought to be invariably—paid beforehand, on the brief being delivered. A fee thus paid, a rule at the bar forbids being returned, except under special circumstances; and the rule

* This has been recently the subject of a decision of the Court of Queen's Bench, in the case of *Egan v. The Guardians of the Kensington Union*, 3 Queen's Bench Reports, p. 935, note (a). The same rule applies to physicians, a case which the author argued. *Veitch v. Russell*, *ib.* 928.

in question is a reasonable one. As counsel have no legal title to remuneration, however laborious their exertions, what would be their position if they were expected or required to return their fees at the instance of unreasonable and disappointed clients? Where ought the line to be drawn? Who is to be the judge in such a case? A client may have derived little or no benefit from his counsel's exertions, which may yet have been great in preparing himself for the trial or argument; an accident, an oversight may have intervened, and prevented his completing those exertions by attending at the trial, either at all, or during the whole of the trial; he may have become unable to provide an efficient substitute; through the sudden pressure of other engagements, he may be unable to bestow upon the case the deliberate and thorough consideration which it requires—an unexpected and formidable difficulty may prove too great for his means of overcoming it, as might have been the case even with men of superior skill and experience;—in these and many other instances which might be put, an angry and defeated client would rarely be without some pretext for requiring the return of his fees, and counsel would be subject to a pressure perfectly intolerable, unreasonable, unfair to themselves, leading to results seriously prejudicial to the interests of their clients; and a practice would be introduced entailing great evils and inconveniences, affecting the credit and honour of both branches of the legal profession. The rule in question rests upon the above, among many other valid reasons, and is generally acted upon. No one, however, can have any practical knowledge of the bar, without being aware of many instances of counsel disregarding that rule, and evincing a noble disinterestedness in the matter of fees, either returning or declining to accept them, at a severe sacrifice of time and labour, after great anxiety and exertion have been bestowed, and successfully bestowed. The rule in question is rigidly adhered to, subject to these

exceptions, by eminent counsel, on another ground—viz. for the protection of junior counsel, who would be subject to incessant importunities if confronted by the examples of their seniors. Take, now, the case of a counsel who has eclipsed most, if not every one, of his competitors, in reputation, for the skill and success of his advocacy—who is acute, ready, dexterous, sagacious, eloquent, and of accurate and profound legal knowledge: that is the man whose name instantly occurs to any one involved, or likely to be involved, in litigation—such an one must be instantly secured—at all events, taken from the enemy—at any cost. The pressure upon such a counsel's time and energies then becomes really enormous, and all but insupportable. As it is of the last importance either to secure his splendid services, or deprive the enemy of them, such a counsel—and such, it need hardly be said, was Sir William Follett—is continually made the subject of mere speculation, by clients who are content to take the chance of obtaining his attendance, with the certainty of securing his absence as an opponent. When, however, the hour of battle has arrived, and, with a compact array visible upon the opposite side, the great captain is not where it had been hoped—or thought possible that he might have been—when, moreover, no adequate provision has been made against such a serious contingency—when the battle has been fought and lost, and great interests are seriously compromised, or for ever sacrificed—then the client is apt, in the first smarting agony of defeat, to forget the chance which he had been content to run, and to persuade himself that he had from the first calculated as a matter of certainty on the great man's attendance—and intense is that client's chagrin, and loud are his complaints. Can it be supposed that this eminent counsel is not sufficiently aware of the true state of the case? It is but fair to give him credit for being under the impression, that all which is expected from him, in many cases, is his best exertions to

attend the trial or hearing—to provide an effective substitute, if unable to attend—and give due attention to the case at consultation. For counsel to act otherwise, deliberately to receive a brief and fee, in a case which he *knows* that he cannot possibly attend, without in the first instance fairly intimating as much to the client—to do so, moreover, in cases of importance, and habitually—is foully dishonourable, dishonest, and cruel, and conduct which there is no pretence for imputing generally to the members of the bar. It cannot, however, be denied, that serious misunderstandings occasionally arise on such occasions; but there are many ways of accounting for them, without having recourse to a supposition involving such serious imputations upon the honour of counsel—arising out of *bonâ fide* accident and mistake—the unavoidable hurry and sudden emergencies of business—misunderstandings between a counsel and his clerks;* between either or both, and the client—and the perplexity and confusion almost necessarily attending the movements of eminent counsel. On such occasions everything is usually done which can be dictated by liberality and honour, and fees are returned without hesitation. If, however, the case can be looked at from another point of view—if the eager client be fairly apprised by the clerk, that Sir —— or Mr ——

* Leading counsel, indeed all counsel much engaged in business, necessarily place their time almost altogether at the disposal of their clerks, whose duty it is to keep an exact record of their employer's engagements, and see that no incompatible ones are made for him. Counsel find quite enough to do, in adequately attending to the matters actually put before them by their clerks, without being harassed by adjusting the troublesome arrangements and appointments, for time and place, where their duties are to be performed—or, at all events, doing more than keeping a general superintendence over their arrangements thus made. To all this must be added those innumerable contingencies in the arrangements of the courts, and the course of business, which no one can possibly foresee; and which often derange a whole series of arrangements, however cautiously and prudently made, and render counsel unable, after having carefully mastered their cases, to attend at the trial or argument.

“may not be able to attend”—or, “there is only a *chance* of his attending”—or “he is very likely to be elsewhere”—and, aware of the multifarious and conflicting calls upon the time of Sir —— or Mr ——, will be content to take his “chance,” and deliver his brief, and pay his fee; in such a case the client will have had all which he had a right to expect—viz. the chance, not the certainty, of the counsel's attendance; there will be no pretence for alleging culpable misunderstanding, or deception.

If ever there were a member of the English bar who may be said to have been overwhelmed by the distracting importunities of clients to secure his services, at all hazards and at any cost, it was the late Sir William Follett; and how he contrived to satisfy the calls upon him, to the extent which he did, is truly wonderful. How can one head, and one tongue, do so much, so admirably? is a question which has a thousand times occurred to those of his brethren at the bar, who knew most of his movements, and were least likely to form an exaggerated estimate of his exertions. The litigant public seemed to feel that every moment of this accomplished and distinguished advocate's waking hours was their own, and they were restricting his sleeping hours within the narrowest limits. Every one would have had Sir William everywhere, in everything, at once! Whenever, during the last fifteen years of his life, there was a cause of magnitude and difficulty, there was Sir William Follett. What important interests have been by turns perilled and protected, according as Sir William Follett acted upon the offensive or defensive! Misty and intricate claims to dormant peerages, before committees of privileges, in the House of Lords; appeals to the High Court of Parliament, from all the superior courts, both of law and equity, in the United Kingdom, involving questions of the greatest possible nicety and complexity—and that, too, in the law of Scotland, both mercantile and conveyancing, so dissimilar to that prevailing in other parts of the king-

dom; appeals before the Privy Council, from the judicial decisions of courts in every quarter of the globe where British possessions exist, and administering varying systems of law, all different from that of England; the most important cases in the courts of equity, in courts of error, and the common law courts in *bank*; all the great cases depending before parliamentary committees, till he entered the House of Commons; every special jury cause of consequence in London and Middlesex, and in any of the other counties in England, whither he went upon special retainers; compensation cases, involving property to a very large amount;—in all these cases, the first point was—to secure Sir William Follett; and, for that purpose, run a desperate race with an opponent. Every morning that Sir William Follett rose from his bed, he had to contemplate a long series of important and pressing engagements filling up almost every minute of his time—not knowing where or before what tribunal he might be at any given moment of the day—and often wholly ignorant of what might be the nature of the case he would have to conduct, against the most able and astute opponents who could be pitted against him, and before the greatest judicial intellects of the kingdom: aware of the boundless confidence in his powers reposed by his clients, the great interests intrusted to him, and the heavy pecuniary sacrifices by which his exertions had been secured.

Relying with a just confidence on his extraordinary rapidity in mastering all kinds of cases almost as soon as they could be brought under his notice, and also on the desire universally manifested by both the bench and the bar to consult the convenience and facilitate the business arrangements of one, himself so courteous and obliging to all, and whom they knew to be intrusted, at a heavy expense to his clients, with the greatest interests involved in litigation; relying upon these considerations, and also upon those others which have been already alluded to, Sir Wil-

liam Follett undoubtedly permitted briefs to be delivered to him, *all* of which he must have suspected himself to be incapable of personally attending to. It must be owned that on many such occasions he may not—distracted with the multiplicity of his exhausting labours—have given that full consideration to those matters which it was his bounden duty to have given to them; and his conduct in this respect has been justly censured by both branches of the high and honourable profession to whom the public intrusts such mighty interests. Still he turned away business from his chambers which would have made the fortunes of two or three even eminent barristers, and has been known to act with spirit and liberality in cases where his imprudence on the score alluded to had been attended with inconvenience and loss to his clients. Nor was he *always* so fortunate as latterly with respect to his clerks, who had, equally with himself, a direct pecuniary interest* on every brief which he accepted, and consequently a strong motive for listening with a too favourable ear to the importunities of clients. The necessary consequence of all this was occasionally the bitter upbraiding of Sir William Follett's desperately disappointed and defeated clients.

Still, however, he did make extraordinary efforts to satisfy all the claims upon his time and energies, and at length sacrificed himself in doing so; to a great extent foregoing domestic and social enjoyments—sparing himself neither by night nor by day, neither in mind nor body. Crowded with consultations as was almost every hour of the day not actually spent in open business in Court—from the earliest period in the morning till the latest at night—it was really amazing that he contrived to obtain that perfect mastery of his ponderous and intricate briefs, which secured

* The clerk of a barrister has a fee on every fee of his employer, in a long-settled proportion of 2s. 6d. on all fees under five guineas; from, and inclusive of five guineas, up to ten guineas, 5s.; from ten guineas 10s., and so on for higher fees.

him his repeated and splendid triumphs in Court. Till within even the last eighteen months, or two years of his life, if you had gone down one morning at half-past nine o'clock, to Westminster, you might have heard him opening with masterly ease, clearness, and skill, a patent case, or some other important matter, before a special jury; and immediately after resuming his seat, you would see him go perhaps into an adjoining court of Nisi Prius, in which also he was engaged as leading counsel, and where he would quickly ascertain the exact position of the case—and effectively cross-examine or re-examine a witness, or object to or support the admissibility of evidence;—then if you followed his footsteps you would find him in the Lord Chancellor's Court, engaged in some equity case of great magnitude and difficulty. Some time afterwards he might be seen hastening to the Privy Council—and by about two or three o'clock at the bar of the House of Lords, in the midst of an admirable reply in some great appeal or peerage case. When the House broke up, Sir William Follett would doff the full-bottomed wig in which alone Queen's counsel are allowed to appear before the House of Lords, and, resuming his short wig, reappear in either—or by turns in both—the Courts of Nisi Prius, where he had left trials pending, having directed himself to be sent for if there should arise any necessity for it. Then he would in a few moments calmly possess himself of the exact state of the cause, and resume his personal conduct of it, as effectively as if he had never quitted the Court. If he could be spared for a quarter of an hour, he would glide out, followed by one or two counsel and attorneys, to hold one, or perhaps two consultations, in cases fixed for the next day. On the Court's rising—perhaps about six or seven o'clock, he would go home to swallow a hasty dinner; then hold two, or even three or four, consultations at his own house; read over—as none but he could read—some briefs; and about eleven or twelve o'clock

make his appearance in the House of Commons, and perhaps take a leading part in some critical debate—listened to with uninterrupted silence, and with the admiration of both friends and foes. The above, with the exception of taking part in the debate of the House of Commons, was little more than an average day's work of the late Sir William Follett! And was it not the life of a galley-slave chained to the oar? He had, however, chosen it, and would not quit his seat, but at the icy touch of death. Such appears to be a fair and temperate account of the real state of the case, with reference to Sir William Follett's great anxiety to acquire money, and his over-eagerness in accepting briefs.

Great allowances ought undoubtedly to be made for him, on the grounds above suggested; and, with reference to the former case, another consideration occurs, which ought to have been already more distinctly adverted to. Sir William Follett had a right to regard his elevation to the peerage as a matter almost of course. Had he lived possibly only a few months longer, he would, in all probability, have become a peer of the realm; and he ought to be given credit for an honourable ambition to avoid the imputation of having inflicted a pauper peerage upon the country. Frail he knew his health to be; and doubtlessly contemplated the necessity of providing suitably for the family whom he was to leave behind him, and which he would have ennobled. But what was involved in providing, under such circumstances, "*suitably*" for a noble family? What ample means would have to be secured by one who had inherited no fortune himself, but was, on the contrary, the sole architect of his fortunes? What prodigious efforts are necessary for a lawyer to realise, by his own individual exertions, an amount which would produce an income of five, four, or even three thousand a-year? And let any one of common sense, and ordinary knowledge of the world, ask himself—whether the highest of those

amounts be more than barely sufficient, without undue economy, to provide for a dowager peeress and a young family ! That such considerations were not lost sight of by Sir William Follett, but, on the contrary, were stimulants to his intense, unremitting, and exhausting labours, it is easy to understand ; and they sprang out of a high, and honourable, and a legitimate ambition. But whatever weight may be attached to these considerations — and generosity and forbearance towards the dead will attach great weight to them—they are no answer to much of the charge brought against the late Sir William Follett, and which ought not to be glossed over and explained away ; and a sense of duty absolutely forces us to make the acknowledgment, that, in his excessive eagerness to accomplish his object, he was hurried into an occasional forgetfulness of that nice and high sense of moral principle which ought to regulate every one's conduct—especially those in eminent positions—for the sake of illustrious example, and, in a man's own case, with reference to the awful realities of HEREAFTER : for a man should strive so to pass through things temporal, as not to lose sight of things eternal.

Let us now, however, endeavour to point out some of the excellences of Sir William Follett's character ; and perhaps the most prominent of them was his admirable temper. Continually in collision with others, on behalf of important interests intrusted to him, and exposed to a thousand trials and provocations—that temper, nevertheless, scarce ever failed him. Serene and unruffled on the most exciting occasions, his manners were perfectly fascinating to all those who came in contact with him. A rude or unkind expression may be said never to have fallen from his lips towards an opponent—or, indeed, any one ; towards juniors and inferiors he was always good-natured and considerate ; and towards the judicial bench he exhibited uniformly a demeanour of dignified courtesy and deference.

He was very tenacious of his own opinions—confident in the propriety of his view of a case—apparently so, always, for he could assume a confidence though he had it not — and would persevere in his efforts to overcome the adverse humour of judges and juries, to an extent never exceeded ; yet withal so blandly, so unassumingly, so mildly, that he never irritated or provoked any one. His temper and self-possession were unequalled, and approached, as nearly as possible, to perfection. Amidst all the distracting multiplicity of his engagements—the sudden and harassing emergencies arising incessantly out of his prodigious practice—he preserved an urbane tranquillity which gave him on all occasions the full possession of his extraordinary faculties, enabled him to concentrate them instantly upon whatever was submitted to his attention, however suddenly — and to conquer without irritating or mortifying even the most eager and sensitive opponent. He never suffered himself to be in a hurry, or fidgeted ; however sudden and serious the emergency which frightened others from their propriety, he retained and exhibited complete composure ; surveying his position with lightning rapidity, and taking his measures with consummate caution — with prompt and bold decision. His guiding energies kept frequently half-a-dozen important causes all going on at once in their proper course. He would glide in at a critical moment—paying, in his agitated client's view, “an angel's visit”—and with smiling ease seize advantages seen by none but himself, repair disasters appearing to others irreparable, and with a single blow demolish the entire fabric which in his absence had been laboriously and skilfully raised by his opponent. No impetuosity or irritability, on the part of others, could provoke him to retaliate, or sufficed to disturb that marvellous equanimity of his, which enabled him the rather good-naturedly to convert impetuosity and loss of temper in others, into an instrument of victory for himself. When others, not simi-

larly blessed, would, in like manner, essay to rush to the rescue, their hurried and confused movements served only to place them more completely prostrate before him. The instant after the issue had been—perhaps suddenly—decided in Sir William's favour—through some unexpected masterstroke of his—he would turn with an arch smile to his opponent, and whisper, "How did you come to let me do it?" If his advance were met sulkily, he would add, with unaffected good-humour, "Come, don't be angry; I dare say you will serve me in the same way to-morrow!" Towards adverse and frequently interrupting judges—towards petulant counsel—towards impudent, equivocating, dishonest witnesses, Sir William Follett exhibited unwavering calmness and self-possession; and withal a dignity of demeanour by which he was remarkably distinguished, and which lent importance to even the most trivial cases which could be intrusted to his advocacy. Perhaps no man ever defeated a greater number of important cases by unexpected objections of the extreme technical character, than Sir William Follett; but he would do it with an air and manner so courteous and imposing, as to lead the uninitiated into the belief that there were doubtless good reasons by which such a course, having been reluctantly adopted, was morally justified. This topic naturally leads to some observations upon the consummate skill, the wonderful rapidity of perception, precision of movement, and unfaltering vigilance, which characterised Sir William Follett's conduct of business. Doubtless his own consciousness of possessing powers and resources far beyond those of the majority of counsel opposed to him, as evidenced in his extraordinary successes, contributed, in no small degree, to his maintenance of that composed self-reliance, and forbearance towards others, by which he was so peculiarly distinguished, and which was aided by a naturally tranquil temperament. What advantage could escape one so uni-

formly and surprisingly calm, vigilant, and guarded as Sir William Follett?

It might have been supposed that a man so overwhelmed with all but incompatible professional engagements, could not give to each case that full and undivided attention which was requisite to secure success, especially against the ablest members of the bar, who were constantly opposed to him. It was, however, far otherwise. No one ever ventured to calculate upon Sir William Follett's overlooking a slip or failing to seize an advantage. *Totus teres atque rotundus* must indeed have been the case which was to withstand his onslaughts. So accurate and extensive was his legal knowledge, so acute his discrimination, so dexterous were all his movements, so lynx-eyed was his vigilant attention to what was going on, that the most learned and able of his opponents were never at their ease till after victory had been definitively announced from the bench—from a Court of Error—or even the House of Lords. They were necessarily on the alert to the latest moment. Some short time before he was compelled to relinquish practice, a certain counsel* was engaged with him as junior in a case before the Privy Council, which it was deemed of great moment that Sir William Follett should be able to attend to.

"I don't exactly know how I stand in the Queen's Bench to-morrow morning," said he, at the consultation late over-night—"but I fear that that long troublesome case of the ——— Railway will be brought on by ——— at the sitting of the Court. I'm afraid I can't get him to put it off—but I'll try; and if he won't, I may yet be able to *settle* the case before he has got far into it—for it will be very strange if all their proceedings are right."

On this slender chance rested the likelihood of Sir William's attendance at the Privy Council. The next morning at ten o'clock, beheld all the counsel on both sides ready for action.

"You're not going to bring on the ——— case this morning, are you?" whispered Sir William Follett, as

* The Author.

soon as he had taken his seat, to his opponent, who was arranging his papers.

"I am indeed, and no mistake whatever about it," answered the latter, with a smiling but determined air.

"Can't we bring it on to-morrow, or some day next week? It would greatly oblige me—I really have scarcely read my papers, and, besides, want to be elsewhere."

"I'll see what my clients say," replied his opponent—and then he consulted them, and resumed—"No—my people are peremptory."

"Very well. Then keep your eyes wide open. I must bring you down as soon as possible, for I want to be elsewhere."

"Ah—I must take my chance about that"—then, turning round to an experienced and learned junior, he whispered—"You hear what Follett says?—Are we really all right?"

"Oh, pho! never mind him—we are as right as possible."

A few moments afterwards, up rose —, and soon got into his case, and soon, also, to the end of it. The case had not been heard more than half an hour, Sir William Follett at once attentively listening to his opponent, and hastily glancing over his own papers, when he rose quietly, and said—"If my learned friend will pardon me, I think, my lord, I can save the court a long and useless inquiry—for there is clearly a fatal objection *in limine* to these proceedings."

"Let us hear what it is," said the Court.

Sir William had completely checkmated his opponent! A statutory requisition had not been complied with; and in less than ten minutes' time the enemy were all prostrate—their expensive and elaborate proceedings all defeated—and that, too, permanently, unless on acceding to the terms which Sir William Follett dictated to them, and which, it need hardly be observed, were somewhat advantageous to his own client!

"Really this is too bad, Follett," might have been heard whispered by

his opponent, as the next case was called in.

"Not at all—why didn't you let it stand over as I asked you?"

"Oh—you would have done just the same then as you have now."

"I don't know that," replied Sir William Follett with a significant smile.

"But why won't your people be more careful?" And then turning to his junior, said—"Now for the Privy Council!" And all this with such provoking, easy, smiling *nonchalance*!

Heaven forbid that anything here said should favour the attempt to defeat justice by technical objections; but there is, at the same time, much vulgar error on that subject, grounded on reasons which would tend to subvert all rules of law and legal procedure whatever. In the case above mentioned, the legislature had thought fit to impose on applicants for redress under the statute in question, a duty, which through haste or negligence had been overlooked, and which Sir William Follett's clients had a perfect right to take advantage of, as soon as his acuteness had detected it. To return, however. No member of the bar, let his experience and skill have been what they might, was ever opposed to Sir William Follett without feeling, as has been already intimated, the necessity of the greatest possible vigilance and research to encounter his boundless resources; his dangerous subtlety and acuteness in detecting flaws, and raising objections; his matchless art in concealing defects in his own case; and building up, with easy grace, a superstructure equally unsubstantial and imposing, and defeating all attempts to assail or overthrow it. Even very strong heads would be often at fault, conscious that they were the victim of some subtle fallacy, which yet they could not at the moment detect and expose; and by their hazy and inconsistent efforts to do so, only supplied additional materials for the use of their astute and skilful enemy, to whom nothing ever seemed to come amiss: who converted everything into an ingredient of success; whom scarce

any surprise or mischance could defeat or overthrow.

A short time before he withdrew from practice, he was engaged at Liverpool, whither he had gone upon a special retainer, in an intricate and important ejectment case. Unexpectedly he discovered, when about half-way through the case, that his client (the plaintiff) had omitted to serve a notice upon the defendant's attorney to produce a certain critical document, at the contents of which it was necessary to get, in order to make out the plaintiff's case. The objection was promptly taken by his opponent—and to the dismay of Sir William's clients. Not so with him, however.

"You have not given a notice to produce them, eh?" he calmly whispered to his client, and was answered with a disturbed air in the negative; and all the court saw that Sir William was in the very jaws of a nonsuit.

"You ought to have done so, but it does not much signify," said he, quietly—"what's the name of the defendant's attorney?" and, on being told it, that gentleman, doubtless chuckling with delight in his anticipated triumph, was somewhat astounded by being suddenly called as a witness by Sir William Follett; who coolly asked him to produce the document in question—and on his refusal, with one or two artful questions, which completely concealed his real object, elicited the fact that he had no such document, had searched everywhere for it, both in his own office, and among his client's papers, and elsewhere, but in vain.

"Now, then, my Lord," said Sir William Follett, "I am entitled to give secondary evidence of its contents!" The Judge assented. Sir William Follett extracted from his own witness all that was necessary—and, out of the nettle Danger plucking the flower *Safety*, won the verdict. Every one, however, who has had opportunities of observing, can give many instances of Sir William Follett's extraordinary tact and readiness in encountering unexpected difficulty, and defeating an opponent by

interposing successive unthought-of obstacles.

In the most desperate emergencies, when the full tide of success was arrested by some totally unlooked-for impediment, his vast practical knowledge, quickness of perception, unerring sagacity, and immovable self-possession, enabled him, without any apparent effort or uneasiness, to remove that impediment almost as soon as it was discovered, and conduct his case to a triumphant issue. He was, indeed, the perfection of a practical lawyer. Whatever he did, he did as well as even his most exacting client could have wished—he won the battle, won it with little apparent effort, and with unfaltering grace and dignity of demeanour. A gentleman felt proud of being represented by such an advocate—who never descended into anything approaching even the confines of vulgarity, coarseness, or personality—who lent even to the flimsiest case a semblance of substance and strength—whose consummate and watchful adroitness placed weak places quite out of the sight and reach of the shrewdest opponent, and never perilled a good case by a single act of incaution, negligence, rashness, or supererogation. When necessary, he would prove a case barely up to the point which would suffice to secure a decision in his favour, and then leave it—equally before the Court and a jury,—the result afterwards showing with what consummate judgment he had acted in running the risk—the latent difficulties to have been afterwards encountered which he had avoided, the collateral interests which he had shielded from danger. He possessed that sort of intuitive sagacity which enabled him to see *safety* at the first instant of its existence—to be confident of having the judgment of the Court, or the verdict of the jury, when others deeply interested and concerned in the cause imagined that they were making no way whatever. "Now, I've knocked him," his opponent, "down"—he would say at such a moment to his junior—"don't let him get up again! I must go off to the House of Lords—

and will come back if you really want me! But mind, if he attempt to do so or so—to put in such and such a paper, on no account allow it; send for me, and fight till I come.” He possessed, to an extraordinary degree, the power of rapidly transferring his undivided and undisturbed attention to everything, great and small, which could be brought before it. A single glance of his eye penetrated the most obscure and perplexing parts of a case—a touch of his master-hand disentangled apparently inextricable complexities. He could apply, with beautiful promptitude and precision, some maxim or principle which had not occurred to those who had devoted long and anxious attention to the case, and which at once dissolved the difficulty. Whether acting on the offensive or defensive, he was equally characterised by the great qualities essential to successful advocacy; but perhaps, when acting on the offensive, he displayed more formidable powers. He tripped up the heels of the most wary and experienced antagonists, just when they imagined themselves in the act of throwing him. It was almost useless to quote a “*case*” against him. Though his opponent deemed it precisely in point in his favour, and on that ground was stopped by the Court from proceeding further, Sir William Follett would ask for the case; and rising up, after a momentary glance at it, show that it was perfectly distinguishable from that before the Court, and, in a few minutes’ time, would be interrupted by the Court, with—“We think, Mr —, that you had better resume your argument!” If, on such occasions, Sir William’s opponent were not a ready and dexterous legal logician, his client would—wish that he had secured Sir William Follett! His power of drawing distinctions and detecting analogies—and that, too, on the spur of the moment—was almost unequalled. It was in vain for an opponent to *feel* that the suggested distinction was without a difference—he too often could not *prove* it to be so—he could not demonstrate the fallacy which had been imposed on even a

strong Court by that exquisite astuteness which, however sinister, was carried off by a charming air of frankness and confidence in the validity of the distinction. On such an occasion, directly the cause was over, he would turn round and say, laughingly, to his discomfited opponent, “You haven’t your wits about you this morning—why didn’t you quote such and such a case?” or “say so and so?” Such things were never said in an unpleasant manner—never truculently—never triumphantly—but simply with a good-humoured, cheerful air of *badinage*, which, so far from irritating you, took off the edge of vexation, and set you almost laughing at yourself for having suffered yourself to be so completely circumvented.

While thus paying a just tribute to the skill and wonderful resources of this eminent advocate, another of his great merits, which shall be noticed, will afford an opportunity for doing justice to the junior bar, with reference to the invaluable, and—by the public—often totally unperceived, assistance which they afford to their leaders. Sir William Follett was pre-eminently characterised by the rapidity with which he availed himself of the suggestions and labours of others. A whisper—a line or two—would suffice to suggest to him a truly admirable and conclusive argument, which he instantly elaborated as if he had prepared it deliberately beforehand in his chamber; and he would put the point with infinitely greater cogency than could have been exhibited by him who suggested it, and defend it from the assaults of his opponents and the bench with truly admirable readiness and ingenuity. He exhibited great judgment and discrimination, however, on these occasions. A false or doubtful point he quietly rejected *in limine*, and would afterwards point out to him who had suggested it, the impolicy of adopting it. Sir William Follett, as is the case with all eminent leaders, was under great obligations, in his successful displays, to the learning and skill of his juniors, and of the

gentlemen who practise under the bar as special pleaders. It is to them that is chiefly intrusted the responsible and critical duty of preparing and advising upon pleadings, and shaping them in the way in which they ought to be presented in Court. Their "opinions" and "arguments" are often of the greatest possible value—often masterly; and no one more highly estimated, or was more frequently and largely indebted to them, than Sir William Follett; but who could do such complete justice to them and so suddenly—as he? A hasty glance over, in Court, such an analysis of pleadings, or affidavits, or legal documents of any kind, as has been spoken of—in a cause to which he had been, up to that moment, entirely a stranger—would suffice to put him in full possession of the true bearings of the most complicated case; and his own great learning, surpassing power of arrangement, and masterly argumentation, would do the rest. If he were taken quite unawares in such a case, and could not possibly procure its postponement, an instant's whisper with a junior—a moment's glance at his papers—would make him apparently master of the case; and by some unexpected adroit manœuvre, he would often contrive to throw the labouring oar upon his opponent—and then, *from him*, would acquire that knowledge of the facts of the case which Sir William Follett rarely failed to turn to his own advantage, so as to secure him success. Great as were his natural endowments, how could incessant exercise, during twenty years' hourly conflict with the ablest of his brethren and of the bench, fail of developing his splendid energies to the uttermost, even up to a point of which we may conceive as little short of perfection? The strength of his reasoning faculties was equalled, if not exceeded, by that of his memory, which was equally susceptible, tenacious, and ready,—qualities these, which, as Dugald Stewart has observed, are rarely united in the same person,* and which, in the case of an advocate, give him

* *Phil. c. vi. sec. 7.*

immense advantages. While he possessed that accurate practical knowledge which enabled him to detect the minutest errors in the conduct of a cause, his comprehensive grasp of mind enabled him to take in the whole of the greatest cause, with all its dependencies; and while he fixed his own eye, with unwavering steadfastness, on the object which he had in view, he could lead his opponent, and keep him, far away from *his*; and address himself to every passing humour of the judicial mind, supporting favourable and repelling adverse intimations, with reasons so plausible as to appear absolutely conclusive. Whoever might forget facts, or lose the drift of the argument, Sir William Follett never did; and when he had the last word, he was almost always irresistible. He required, for the purposes of justice, to be followed by a watchful and strong-headed judge, who could detect the cunning fallacy, or series of fallacies, which had led the jury quite astray from the real points—the true merits of the case; and even such a person was often unable to remove the impression which had been produced by the subtle and persuasive advocate, whose voice had preceded his. That voice was one indeed lovely to listen to. It was not loud, but low and mellow, insinuating its faintest tones into the ear, and filling it with gentle harmony. His utterance was very distinct—a capital requisite in a speaker—and he had the art of varying his tones, so as to sustain the attention of both judges and juries for almost any length of time. His person and attitudes, also, were most prepossessing. Their chief characteristics were a calmness and dignity which never disappeared in even the most exciting moments of contest, and of irritability, and provoking interruption. Woe, indeed, to one who ventured to *interrupt* him! However plausible, cogent, or even just, might be the suggestion thrown in by his adversary, Sir William Follett contrived to make it tell terribly against him, either harmonising it with his own case, or showing it to

be utterly inconsistent with that of the interrupting party.

Sir William Follett, who was above the middle size, always stood straight upright, as every one ought to do while addressing either judge or juries. He seldom used his left hand in speaking, but the play of his right hand was graceful, easy, and natural. His countenance was by no means handsome, yet of striking expression—decisively indicative of intellectual power, particularly about the forehead, which was largely developed. His eyes were grey, rather small, and deep-set; but they had a power of riveting the attention of any one whom he was addressing, particularly in public. You felt him to be a man whom you could neither neglect nor trifle with; who was addressing your intellect in weighty words, fathoming your intentions and detecting your inclinations and prepossessions, and leading you in some given direction with gentle but irresistible force. He would often startle you with the boldness of his propositions, but never till he had contrived, somehow or other, to predispose you in favour of that view of the case which he was presenting. He had a most seductive smile; truth, candour, and gentleness seemed to beam from it upon you; and you were convinced that he felt perfect confidence in the goodness of his cause! He evinced a sort of intuitive sagacity in adapting himself to the character and mode of thinking of those whom he addressed. If he were standing before four judges, all of different but decided characters—and all continually interrupting him with questions and suggestions, a close experienced observer could detect, in full play, in this wily advocate, the quality which has just been mentioned. He was never irritable, or disrespectful to the bench, however trying their interruptions; but calm determination was always accompanied with courteous deference for judicial authority. It is believed that no one ever heard a sharp expression fall on Sir William Follett from the bench.

Foreigners coming to our courts, have frequently expressed admiration at his tone and bearing, as calm, graceful, and dignified, even though what he said could not be understood by them. His language was chaste, simple, and vigorous, but never ornate. He always came direct to the point; and the severest critics could find no fault in his diction. If he had read extensively, his speeches never bore witness of that fact; for he was, perhaps, never heard to use a quotation, either in verse or prose—except, of course, in the latter instance, books of legal authority, treatises, and reports of cases. Of fancy, of imagination, he appeared quite destitute. If originally possessed of any, it must for many years have been overpowered and extinguished by the incessant and exclusive exercise of his memory and reasoning powers for the purposes of business. Yet was he capable, on great and interesting occasions, when addressing either the full court or a jury, of riveting the attention and exciting the emotions of his hearers. Trickery, however compact and strong its meshes, he tore to pieces contemptuously, and with scarce an effort: nothing could escape his penetrating eye; it detected those faint vanishing traces of fraud, which were invisible to all other eyes. If there be genius in advocacy, Sir William Follett was undoubtedly a man of genius; and genius may perhaps be taken to signify great natural powers, accidentally directed—or, a disposition of nature by which any one is qualified for some peculiar employment. What intellectual qualifications and resources are not requisite to constitute a first-rate advocate? If the Duke of Wellington has a genius for military affairs, so had Sir William Follett for advocacy—and genius of a high order, as will be testified by all those before whom, or on whose behalf, he exhibited it—alike by clients or judges, as by opponents. If he were a subtle sophist himself, he was himself one on whom no sophistry could impose. It fled before the penetrating glance of his aquiline eye.

Faculties such as his must have secured him eminence in any pursuit or walk in life to which he might have devoted himself; particularly to the military profession, to which he always had a strong inclination. Who can doubt that if his lot had been placed from the first in political life, he would quickly have become pre-eminent in the senate, and as a statesman? Who that knew him, but would pronounce him to have been signally fitted for political life, to govern men of intellect, to deal with great affairs and mighty interests—to detect and discomfit the adversaries of peace and order, to vindicate the laws, and uphold the best interests of society. All this he might have been; *sed dis aliter visum*—he devoted himself, heart and soul, throughout life, to the labours of the bar, and the rapid acquisition, by means of them, of large fortune and official distinction. In all these aims he must have succeeded to his heart's content; for he was for many years the most distinguished and popular of advocates; he became the Queen's Attorney-general, and died in the prime of life, leaving behind him a fortune of some two hundred thousand pounds. That great class of persons who constituted his clients, will always remember his brilliant and successful exertions with gratitude.

His brethren who were opposed to him, heartily acknowledge the pre-eminence of his abilities and professional acquirements; and they, as well as the junior bar, who for years watched his brilliant exertions, must acknowledge that the one in struggling with him, and the other in watching those struggles, have witnessed an instructive exhibition of forensic excellence—a model of advocacy. To prepare for a contest with Sir William Follett, and to contend with him, called forth all a man's energies, and formed a severe and salutary discipline for the strongest. "Their antagonist was their helper: they that wrestled with him, strengthened their nerves, and sharpened their skill: that conflict with difficulty obliged them to an intimate acquaintance with

their object, and compelled them to consider it in all its relations, and would not suffer them to be superficial."* In him they saw daily in exercise, many of the greatest qualities of advocacy—and beheld it triumphing over every imaginable kind and degree of obstacle and difficulty. He showed them how to maintain the bearing of gentlemen, in the moments of hottest exasperation and provocation, which can arise in forensic warfare. He taught them how to look on success undazzled—to bear it with modesty of demeanour, and subordination of spirit. He exhibited to them the inestimable value of early acquiring accurate and extensive legal knowledge—of being thoroughly imbued with the *principles* of jurisprudence, and habituating the mind to close and correct reasoning. The traces of his surpassing excellence in these matters are now to be found nowhere but in the volumes of Law Reports, where the essence of his innumerable masterly arguments will be found collected and preserved by gentlemen of patient attention and learning competent for the task, and on whose modest but valuable labours will hereafter depend all that posterity will know of Sir William Follett. These are the legitimate records of his intellectual triumph; as are the prosperous circumstances in which he has left his family,—to them a solid and noble testimonial of his affectionate devotion to their interests. Their fortune was the purchase of his life's-blood. The acquisition of that fortune absorbed the whole of his time and of his energies; it deprived him of thousands of opportunities for relaxation and enjoyment, and also—it must be added—for the exercise of virtues which probably he possessed, but gave himself little or no time for calling into action—of those virtues which elevate and adorn the individual, while they benefit our fellow-creatures and society—for performing the duties which God Almighty has imposed upon his creatures, proportionately to their endowments and opportunities, himself tell

* Adapted from Edmund Burke.

ing us, that *to whom much is given, of him shall much be required*. To the young, eager, and ambitious lawyer, the contemplation of Sir William Follett's career is fraught with instruction. It will teach him the necessity of *moderation*, in the pursuit of the distinctions and emoluments of his profession. By grasping at too much, often everything is lost.

Was not Sir William Follett's life one uninterrupted scene of splendid slavery, the pressure of which at length broke him down in the meridian of his days? Had he been able to resist the strong temptations by which he was assailed—temptations, too, appealing powerfully to his love of family and offspring—a long life's evening of tranquillity, of unspeakable enjoyment, might have rewarded a day of great, yet not excessive labour. He might also have devoted his powerful talents to the public service, in such a way as to secure the lasting gratitude and admiration of posterity, by remedying some great existing defect in his country's jurisprudence, by making some solid contribution to the safeguards of the constitution. But did he ever do so? All his great experience, talents, and learning, might never have existed, for any trace of them remaining in the records of his country's constitution. What page in the statute-book attests his handiwork? And what did he ever do to advance the interests of the profession to which he belonged? These are questions asked with sorrowful sincerity and reluctance, and with every disposition to make the amplest allowances for those failings of Sir William Follett, which undoubtedly detracted from his excellence and eminence. He was a man of modest, mild, inoffensive character, who spoke ill of, and did harm to, no one; but, at the same time, was not distinguished by that active and energetic benevolence, liberality, and generosity, which secure for the memory of their exhibitant, ardent, enduring gratitude and reverence. His excellence was of a negative, rather than a positive kind. He did harm to no

one, when he might have done so with impunity, and was possibly sometimes tempted to do so; but then he did not do good, at all events to the extent which might have been expected from him. He was, however, by no means of a mean or selfish nature; but in his excessive, and to a certain extent pardonable, eagerness to make what he deemed a suitable provision for himself and his family, gave himself the appearance of being comparatively indifferent to the interests or welfare of others.

It is only fair to his memory to acknowledge, that legal eminence is too often liable to the same imputations—that professional pursuits have a strong tendency to warp amiable and generous natures—to keep the eye of ambition, amidst the intense fires of rivalry and opposition, fixed exclusively upon one object—the interest and advancement of the individual. Nothing can effectually control or counteract this tendency, but a lively and constant sense of religious principle; which enlarges the heart till it can *love our neighbour as ourselves*, which brightens the present with the hopes of the future, which purifies our corrupt nature, and elevates its grovelling earthward tendencies by the contemplation of an eternal state of being dependent upon our conduct in this transient scene of trial. Who can tell the extent to which these and similar considerations are present to the minds of the dying great ones of the earth, who, suddenly plucked from amidst the dazzling scenes of successful ambition, are laid prostrate upon the bed of death—their *pale faces turned to the wall*, with *HEREAFTER* alone in view, and under an aspect equally *new* and awful? Let us, therefore, be wise, and be wise in time, nor haughtily disregard the earnest voice of warning, however humble and obscure may be the quarter whence it comes.

Sir William Follett belonged to a respectable family in Devonshire, and was born on the 2d December 1798. In 1814 he went to Trinity College, Cambridge, and took the degree of

B.A. in 1818, without any attempt to obtain *honours*; quitting college in this latter year, and entering the Inner Temple, he prosecuted the study of the law in the chambers of eminent practitioners, where he continued for three years—and then practised for about three years as a special pleader. He was called to the bar in 1824, and went the western circuit, but for one or two years was much disheartened by his want of success. He expressed, on one occasion, his readiness to accept of the place of police magistrate, if it were offered! His progress was, soon afterwards, signally, and all but unprecedentedly, rapid. He was appointed Solicitor-general in 1834, while yet behind the bar; and in 1835 was returned for Exeter, for which place he sat till his death. He quitted office with Sir Robert Peel in 1835, but returned with him to it in 1841, and became Attorney-general in 1844, on the promotion of Sir Frederick Pollock to the chief seat in the Court of Exchequer. For several years before Sir William Follett's decease, his constitution, never of the strongest, was broken by his incessant and severe labours; and in 1844, having been obliged to give up practice altogether, he went to Italy at the close of the session—having attended at the bar of the House of Lords, to lead for the Crown in the O'Connell case. He was, however, quite unfit for the task. His spine was then so seriously affected that he was obliged to sit upon a raised chair while addressing the House, the Chancellor and the other Lords, out of great consideration for the distinguished and enfeebled speaker, moving down to the lower end of the House, close to the bar, in order to occasion him as little exertion and fatigue as possible. He did not speak long, and the effort greatly exhausted him; and it was not without difficulty, owing to something like partial paralysis of the lower extremities, that he could walk from the House.* He returned from the Continent in March 1845, a little better than when he had

* Leaning on the Author's arm.

gone, and endeavoured to resume the discharge of such of his less onerous, professional, and official duties as admitted of his attending to them at his own house. He continued to listen to patent cases, attended by counsel, till within a short period of his being finally disabled; but every one saw with pain the total exhaustion under which he was suffering. Finding himself rapidly declining, in May 1845, he wrote a letter to the Prime Minister, proffering the resignation of his office of Attorney-general.

He soon afterwards retired, for the advantage of some little change of air, to the house of a relative in the Regent's Park, where he enjoyed the soothing attentions of his family, and reverently received the consolations of religion. The public manifested great anxiety to learn the state of his health, and the morning and evening newspapers contained regular announcements on the subject, as in the case of persons of the highest distinction. Her Majesty, Prince Albert, also, with numbers of the nobility, sent daily to inquire concerning him. For the last day, or possibly two days of his life, he became unconscious, and slightly delirious—and expired, without apparent pain, on Saturday afternoon, the 28th June 1845.

For a long series of years, the death of no member of the legal profession had excited a tithe of the public concern which followed that of Sir William Follett, the Attorney-general. The bar felt that its brightest light had been almost suddenly extinguished. Its most gifted members, and those of the judicial bench, heartily acknowledged the transcendence of his professional qualifications, and the unassuming peacefulness with which he had passed through life. Had he lived to occupy the highest judicial seat—the *woolsack*—few doubted that, when relieved from the crushing pressure of private practice, he would have displayed qualities befitting so splendid a station, and earned a name worthy of ranking with those of his great predecessors.

His funeral took place on Friday,

the 4th of July, at the Temple church. He was a bencher of the Inner Temple, and his remains repose in the vault at the south-eastern extremity of the church. For nearly two hours before the funeral took place, the church—a chaste and splendid structure—had been filled with members of the bar, and a few others, all in mourning, and awaiting, in solemn silence, the commencement of the mournful ceremony. At length the pealing of the organ announced the arrival of the affecting moment when the body of Sir William Follett—himself having been not very long before a worshipper in the church—was being borne within its walls, preceded by the surpliced choir, chanting the service, in tones which still echo in the ears of those who heard them. All rose silently, with moistened eyes, and beating hearts, as they beheld, slowly borne through the aisle, the coffin which contained the prematurely dead—him whose figure, erect and graceful in forensic robes, and dignified in gesture, had so recently stood among them, their cheerful and gifted associate in the anxious business of life—from whose lips, now closed forever, had but lately issued that rich, harmonious voice, whose tones had scarce, even then, died away! They were bearing him to his long home, with all the solemn pomp and circumstance which testify the reverence paid to departed eminence: and when the coffin was placed beside the altar, at the mouth of the vault, no language can adequately describe the affecting and imposing scene which presented itself. The pall had been borne by the Prime Minister (Sir Robert Peel), the Lord Chancellor (Lord Lyndhurst), one of the Secretaries of State (Sir James Graham), and the Vice-Chancellor of England (the late Sir Launcelot Shad-

well); and amongst those who followed were Lord Brougham, Lord Langdale, the late Chief-Justice of the Common Pleas (Sir N. Tindal), and many of the judges, (almost all the courts, both of law and equity, having suspended their sittings on account of the funeral); while in the body of the church were to be seen nearly all the distinguished members of the bar, who had been, up to a very recent period, opposed to, or associated with, him whose dust was now on the point of being committed to its kindred dust. Nearest to the body sat the three great ministers of the Crown, who had come to pay their tribute of respect to the remains of their gifted and confidential adviser; and their solemn countenances told the deep impression which the scene was making upon them, so illustrative of the fleeting shadowiness of earthly greatness! and their reflections must have been akin to those which—as may have occurred to them—their own obsequies might, at some future period, excite in the spectators—reflections such as those with which a great one, departed,* closed his grandest labours.

“Oh, eloquent, just, and mighty death! whom none could advise, thou hast persuaded; what none hath dared, thou hast done; and whom all the world hath flattered, thou only hast cast out of the world and despised. Thou hast drawn together all the far-stretched greatness, all the pride, cruelty, and ambition of man, and covered it all over with these two narrow words—*HIC JACET!*”†

* Sir Walter Raleigh—*History of the World*, last paragraph.

† The statue of him which appeared in the Crystal Palace of 1851, and is now in Westminster Abbey, faithfully represents his countenance and figure.

MEMOIR OF JOHN WILLIAM SMITH,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.*

But the fair guerdon when we hope to find,
And think to burst out into sudden blaze,
Comes the blind Fury with the abhorred shears,
And slits the thin-spun life.

MILTON.—*Lycidas*.

THE name of John William Smith, barrister-at-law, of the Inner Temple, now appears, possibly for the first time, before nineteen-twentieths of the readers of *Blackwood's Magazine*. It is that, however, of a remarkable and eminent man, just cut off in his prime, before he had completed his thirty-seventh year: having as yet lain little more than a twelvemonth in his grave, to which he had been borne by a few of his sorrowful and admiring friends, on the 24th of December 1845. Another eminent member of the English bar, Sir William Follett, belonging to the same Inn of Court, and also cut off in the prime of life, while glittering in the zenith of his celebrity and success, had been buried only five months previously. I endeavoured to give the readers of this Magazine, in January 1846, some account of the character of that distinguished person; and Mr Smith, learning that I was engaged upon the task, with morbid anxiety repeatedly begged me to show him what I was writing, up to within a few weeks of his own decease: a request with which, for reasons which will become obvious to the reader of this sketch, I declined to comply. With Sir William Follett's name all the world is acquainted: yet I venture to think that the name of John William Smith has greater claims upon the attention of readers of biography. His

character and career will, it is believed, be found permanently and intrinsically interesting,—at once affecting, inspiring, and admonitory. He fell a martyr to intense study, just as that competent and severe body of judges, the English bench and bar, had recognised his eminent talents and acquirements, and the shining and substantial rewards of unremitting exertion were beginning to be showered upon him.

He came to the bar almost totally unknown, and was destitute of any advantages of person, voice, or manner. His soul, however, was noble, his feelings were refined and exalted; and when, leaving not an enemy behind him, he departed from the scene of intense excitement and rivalry into which his lot had been cast, those who had enjoyed the best opportunities for forming a true judgment of him, knew not whether more to admire his moral excellence or his intellectual eminence, which shone the more brightly for the sensitive modesty which surrounded them. Many have expressed surprise and regret that so interesting a character should fade from the public eye, without any attempt having been made by his friends to give a full account of his character and career. I was one of his earliest friends; witnessed the whole of his professional career, shared his hopes and fears,

* *Blackwood's Magazine*, February 1847.

and, with two or three others, attended upon him affectionately to his last syllable of recorded time. During the year which has since elapsed, I have reflected much upon his character, and had many opportunities for ascertaining the respect with which his memory is cherished in the highest quarters. I shall endeavour, therefore, though with great misgivings as to my competency for the task, to present to the reader an impartial account of my gifted friend: no one else, with one exception,* having, up to this time, undertaken the task.

John William Smith, the eldest of eight children, was of a highly respectable family: his father having died in 1835, Vice-treasurer and Paymaster-general of the Forces in Ireland. Both his parents were Irish—his mother having been a Miss Connor, the sister of a late Master in Chancery, in Ireland. They lived, however, in London, where the subject of this memoir was born, in Chapel Street, Belgrave Square, on the 23d January 1809. From the earliest period at which note could be taken of their manifestation, he evinced the possession of superior mental endowments. No one is less disposed than the writer of this memoir, to set a high value upon precocious intellectual development. *Observatum fere est*, says Quintilian, in his passionate lamentation for the death of his gifted son, *celerius occidere festinatam maturitatem*.† The maturity, however, of John William Smith far more than realised his early promise, and renders doubly interesting any well-authenticated account, and such I have succeeded in obtaining, of his early childhood. When advanced not far from infancy, he appears to have been characterised by a kind of quaint thoughtfulness, quick observation, and a predilection for intellectual amusements. He was always eager to have poetry read to him, and soon exhibited proofs of that prodigious memory

by which he was all his life pre-eminently distinguished, and which has often made the ablest of his friends imagine that, with him, *forgetting* was a thing impossible. Before he knew a single letter of the alphabet, which he learnt far earlier, moreover, than most children, he would take into his hand his little pictured story-book, which had been perhaps only once, or possibly twice, read over to him, and pretend to read aloud out of it: those overlooking him scarcely crediting the fact of his really being unable to tell one letter from the other; for he repeated the letterpress *verbatim*, from beginning to end. This feat has been repeatedly witnessed before he had reached his third year. To all the friends of Mr Smith in after-life, this circumstance is easily credible, for the quickness of his memory was equalled by its tenacity, and both appeared almost unequalled. When three years old, he read with the greatest facility all such books as are usually put into the hands of children; and his delight was to *act*, in the evening, the fable which he had read in the morning—and a reader insatiate he even then appeared to be. Between his third and sixth year, he had read, effectually, many books of history, especially those of Greece, Rome, England, and France: acquiring with facility what he retained with the utmost fidelity. He seems to have been, at this time, conscious of possessing a strong memory, and pleased at testing it. When not five years old, he one day put the parts of a dissected map, consisting of a hundred pieces, into his father's pocket, and then called for them again one by one, without making a single mistake, till he had finished putting them together on the carpet. At this early period, also, he displayed another first-rate mental quality, namely, the power of abstraction—one by which he was eminently distinguished throughout his subsequent life. When a very young child, he was frequently observed exercising this rare power—lost to all around him, and evidently intent upon some one object, to the exclusion of all others:

* See an eloquent but brief sketch, of J. W. Smith, in the *Law Magazine* for February 1846, by Mr J. G. Phillimore, of the Oxford Circuit, now M.P. for Leominster, one of his most accomplished friends.

† Lib. vi., proem.

Thus, for instance, he would often be occupied with a play of Shakespeare, while sitting in the corner of the drawing-room, in which were many persons engaged in conversation, or otherwise doing what would have effectually interrupted one who was not similarly endowed with himself. One of his brothers often played at chess with him, with closed folding-doors between them, the former moving the chess-men for both, and the latter calling out the moves, without ever making an erroneous one, and frequently winning the game. His partiality to poetry, from almost his infancy, has been already noticed: and it is to be added, that he was equally fond of reading and *writing* verses. One of his relatives has at this moment in her possession a "Poem" from his pen, in pencilled *printed* characters, before he had learned, though he learned very early, to write, entitled, "The Mariner's Return." Till recently, also, the same lady possessed another curious relic of this precocious child,—namely, a prose story; the hero of which was a peasant boy, whom he took through almost all the countries of Europe, and through many vicissitudes, finally exalting him to the post of Prime Minister to Henry VIII. The knowledge of geography and history displayed in this performance, is declared by those who have read it, to be truly wonderful. Shortly after he had reached his eighth year, he was sent to a school at Isleworth, kept by a Dr Greenlaw, and remained there four years. I have heard him frequently describe his first arrival at the school, and several incidents attending it, in such a manner as showed him even to have then possessed great shrewdness and keenness of observation. One, in particular, struck me at the time as illustrative of his stern sense of right, and habits of reflection, at that very early period. "I remember," said he, "that soon after I had got to school, a big boy called me aside, and told me seriously that I must prepare for a terrible flogging on Saturday morning, and that however well I behaved it would

signify nothing, for it was an old custom at the school to flog a little boy on his first Saturday, before the whole school, by way of example, and to make him behave well. I was horribly frightened at this; but the first thing that struck me, and kept me awake a good while thinking of it, was, how *unjust* a thing it was to do this: and I thought so much of *this*, that I do believe I was at length far more angry than frightened. Of course, when Saturday came, I found it had been all a joke only; but I always thought it a disagreeable and improper joke." I have several times heard Mr Smith mention this little circumstance, and I have above given many of his own expressions. He used to proceed to describe the reasonings which he had held in his own mind upon this subject, all which, he said, he vividly recollected; and it was certainly both curious and interesting to hear how he puzzled himself in trying to find out "reasons why it might be right to flog him under these circumstances." Dr Greenlaw was not slow in discovering the extraordinary abilities of the little new-comer, and used to describe them in glowing terms to his father; but would add that, much as he admired the child's talent and diligence, he entertained a still higher opinion of the little fellow's perfect modesty, his seeming unconsciousness of his mental superiority over his companions, his honesty and simplicity of character, and, above all, his unwavering and inflexible adherence to truth on even the most trifling occasions. Every living friend of his will testify that he was thus distinguished throughout life, exhibiting that

Compositum jus, fasque animi, sanctosque recessus
Mentis, et incoctum generoso pectus honesto,
which the stern moralist* declared to afford the noblest qualification for approaching the presence of the gods—
Hæc cedo ut admoveam templis, et farre litabo.

During this period, namely, from his eighth to his twelfth year, he became

* Pers., Sat. ii. 73, 74.

passionately fond of writing verses: and I have now before me, kindly forwarded by one of his relatives in Ireland, two small quarto MS. volumes, containing exclusively what he wrote during the time in question, extending to upwards of seventy or eighty pieces, some of considerable length, and in almost every kind of English verse. Their genuineness is unquestionable; and I shall quote from them in the state in which they were originally collected at the time, without the alteration of a single letter. Having completely satisfied myself on this point, and I hope the reader also, what will he think of the following evidence of the matured perception of humour displayed by a child scarce thirteen years of age? I have transcribed it *verbatim*. It is prefixed to a satirical poem of some length, entitled "Practical Morality."

Preface *loquitur*—

"Though it may appear to thee, courteous reader, that I have in all ages been considered as a vehicle of fumbling apologies and trivial excuses, a sort of go-between employed by the writer to deprecate the anger of the peruser, in short, the literary servant of all-work, whether my duty be to expatiate on the merits, or apologise for the defects of my master, or (as it often is) to claim the pity and forbearance of the mobile, and set forth in humble terms the degradations he has submitted, and is still ready to submit to,—I say, reader, though a part so servile has been assigned to me, yet, should my natural claims and intrinsic merits be duly considered, different, far different would be my station. What! am I thus exalted in situation above my [*sic*] situated, (as I may say), in the very van, exposed to the sneer of every satirical reader and sententious critic? Am I placed in a post so dangerous, and are contempt and humiliation my only reward? O, mankind, where is your gratitude? Think, generous reader, on the services I have so often rendered you: think how often, when you were about to enter upon the stupendous folio, or

the dull and massy quarto, four inches at least in thickness, think, O think, how often my timely, though unpromising appearance, has warned you not to encumber your brain with the incalculable load of lumber! With me, then, let the glorious work of reformation commence, restore me to the honour and esteem I so justly deserve. I, for my part, shall still continue to be a spy upon stupidity, and oft shall you receive the reward of your benevolence from my friendly and seasonable admonitions.

"Hezekiah Shortcut,
O tempora! O mores!"

The poem is in two cantos, the first of which thus opens,—

Long have I view'd the folly and the sin
That fill this wicked globe of ours, call'd
carth,
And once a secret impulse felt within
My bosom, to convert it into mirth;
But then the voice of pity, softly sighing,
Hinted the subject was more fit for crying.
Democritus was once a Grecian sage—
A famous man, as every one must know—
But rather fond of sneering at the age,
And turning into laughter human woe;
Another sage, Heraclitus * to wit,
Considered it more wise to weep for it.
I can't determine which of them was right,
Nor can I their respective merits see;
The subject, disputation may invite,
But that belongs to wiser men than me.
It has already been discuss'd by one,
A better judge by far (see Fenelon).

Verse the twelfth touches upon a topic with which its writer was destined afterwards, for a short time, to be practically familiar.

How sweet a fee unto the youthful lawyer
Never before presented with a brief,
To whose distressing case some kind employer
Steps in, and brings his generous relief;
Thus giving him a chance to show *that* merit
So long kept down by the world's envious spirit.

Here is the little practical moralist's advice to the ladies!—

Ye ladies, list! and to my words attend,
They're for your good, as you shall quickly see.

* The writer's extreme youth will extenuate this apparent false quantity—if the penultimate was treated as short. Possibly it was treated as *long*—and the limping line fashioned in imaginary conformity with such a line,

— "Magnum Jovis incrementum."

Sit down by the fireside, your stockings mend,
And never mingle spirits with your tea.
When you retire at night, put out the candle,
Discard your lap-dogs, leave off talking scandal.

When card-tables are set, you must not play
For ought beyond the value of one shilling :
This is my firm decree, although you may,
As ladies mostly are, be very willing.
I bid you cease, for into debt 'twill run ye,
Do you no good, but spend your husband's money.

Husbands are fools who let their wives do so,—
I scarce can pity when I see them ruin'd ;
For when they squander all, they ought to know,
Destruction is a consequence pursuant.
When each has turn'd his home into a sad-house,
He then finds out that he deserves a mad-house.

I do denounce, in all the songs you sing,
The words, *sweet, lovely, dear angelic charmer,*
Flames, darts, sighs, wishes, hopes,—they only bring
Thoughts to a lady which perchance may harm her.
You therefore must consider as ironic
Every expression which is not Platonic.

The whole poem is written in a droll, satirical strain, and shows a great familiarity with the topics of ancient and modern literature. The rest of the volume consists of translations from Anacreon, Horace, and other Greek and Latin poets, and many original pieces; one of which latter, entitled "The Prodigal Son," thus gravely and impressively opens,—

Far from his kindred, from his country's soil,
By want enfeebled, and oppress'd by toil,
Compell'd with slow reluctance to demand
The niggard pity of a stranger's hand,
And forced, in silent anguish, to abide
The sneer of malice, the rebuke of pride :
A wretch oppress'd by sorrow's galling weight,
Deplored his ruined peace, his hapless fate.
His was such anguish as the guilty know,
For self-reproach was mingled with his woe.
He dared not fortune's cruelty bemoan—
The error, the offence, was all his own.

There are also scattered over the volume several epigrams, one of which is headed thus: "On a Lady who married her Brother-in-law."

After so many tedious winters past,
The lovely S—— has caught a swain at last—
A swain who twice has tried the marriage life,
And now resolves again to take a wife.
Behold ! behold the *new-made* mother runs
With ardour to embrace—*her nephew-sons !*

The second volume commences with a poem of considerable length, entitled, "Salamis," with a notice that "The foregoing poem was presented to his father, by John William Smith, January 23d, 1821, the day on which he completed his twelfth year." The following is "The Argument of Canto I. :—

"Themistocles, lying awake in the night, is surprised by the entrance of Aristides, who informs him that the Persian fleet had completely surrounded them. Themistocles tells him that this was effected by a device of his own, to prevent the Greeks from deserting the Straits, and sends him to Eurybiades, calls a council in the morning, in which it is resolved to attack the enemy, and the whole fleet move forward in order of battle.—Scene, the Grecian camp on the sea-shore of Salamis."

The first Canto thus opens—

Now darkness over all her veil had spread,
Save where the moon her feeble lustre shed,
When from the clouds emerging, her dim ray
Mock'd the effulgence of the lucid day.
Stretch'd on their beds, the Greeks in soft repose
Awhile forgot their harass'd country's woes.
Themistocles alone awake remain'd,
By his anxiety from sleep restrain'd ;
Although the chief with labour was oppress'd,
His care for Greece withheld his wonted rest.
For three long hours, all had been still around,
At length he hears (or thinks he hears) a sound ;
He starts, and sees a stately form advance,
Clad in bright arms, and with a shining lance,
And by the moon's faint beams, the chief descried
A Persian sabre glittering at his side.

Here follows the "Argument of Canto II.—

"Mardonius is surprised by the noise of the Greeks advancing, and the hostile fleet appearing, the ships move forward to meet them.—Lycomedes takes the first galley, and consecrates the spoils to Apollo.—The acts of Eurybiades, Mardonius, and Themistocles.—Aristides and Lycomedes, landing in the Isle of Psytalia, destroy a number of Persians stationed there, at sight of which

part of the Persian fleet gives way.—Ariamenes, endeavouring to rally them, is slain.—At his death the rest of the Persians fly. The Greeks pursue them to the Attic shore, and obtain a complete victory, which concludes the poem.

The whole poem shows a mind thoroughly imbued with Grecian history, and the action is conceived and described with considerable spirit. There are a few lame verses, here and there, but scarcely a single puerile conceit; while a perusal of the entire contents of these records of a gifted child, is calculated to surprise, by the great extent of reading displayed by its writer, and the ease and precision with which he brings it to bear upon his subject.

In the spring of 1821 he entered Westminster School, taking his place on the fourth form, which secured him an exemption from fagging. Here, again, his progress was that of a boy of first-rate abilities, great diligence, and unvarying good conduct. Two years afterwards, viz. in the spring of 1823, he gained a king's scholarship, without the assistance of a "*help*," a thing which it is believed was unprecedented. In the College, however, he could not escape *fagging*; but such was his independent spirit, that he refused to submit to it, and immediately resigned his hard-won scholarship, with all its prospects. His father was somewhat nonplussed by this occurrence; and presently sent him to a school at Blackheath, kept by the present rector of Woolwich, the Rev. William Greenlaw, a son of his former master, Dr Greenlaw. The Blackheath school contained no fewer than seventy-two boys, many of them on the eve of quitting for the universities; but as soon as John William Smith made his appearance, he was not only recognised as being far superior to them all, but equally well read with the ushers; and he consequently read with Mr Greenlaw himself, alone! being then, it will be recollected, little more than fourteen years of age! He wrote every species of Latin verse with the utmost facility—of which he

gave, on one occasion, a proof not yet forgotten by his schoolfellows: for, one evening, shortly after going there, he wrote all the Latin verses for the entire school, from the highest to the lowest—in all metres, and on every variety of subject. This feat was lately communicated to me by one of his then schoolfellows; and I also recollect him once mentioning the subject to me himself; adding, if I recollect correctly, that there was not a blunder found in any of the verses which he had written. During his vacations he visited France, and mastered the French and Italian languages, with both of which, up to the period of his death, he continued perfectly familiar, and partial to the writers of both. About this time he began to cast about for a profession; and entertained the notion of either going out to India, in a military capacity, or entering Woolwich academy as a cadet. His father persuaded him to relinquish the former step, but assented to his adopting the latter; and he paid close attention to engineering. He has often expressed to me the delight he took in studying *fortification*; adding, that he had sometimes regretted having abandoned that line of life, for that he fancied he should have been successful in it. His father would have procured him an appointment in conformity with his wishes, had not his views concerning him been changed by his friend, the Right Honourable Sir George Fitzgerald Hill, then Vice-treasurer of Ireland, who gave his son an appointment in the Vice-treasurer's office at Dublin Castle. Sir George quickly detected the superior talents and acquirements of young Smith, and became much attached to him; evincing peculiar satisfaction in conversing with him, and listening to his quaint, exact, pithy answers to questions proposed to him. About this time he was smitten with the love of Lord Byron's poetry, which he devoured with avidity, and his own love of verse-writing revived. He became, indeed, very anxious to excel in poetry. He was soon tired of his official duties, and

resigned his situation in favour of his brother, who at this moment fills a responsible office in the same department in Dublin Castle.

In the year 1826, being then in his seventeenth year, Mr Smith entered Trinity College, Dublin, where his whole career was, as might have been expected, one of easy triumph. He constantly carried off the highest classical premiums, and occasionally those in science, as well as—whenever he tried—for composition. In 1829, he gained a scholarship, and in the ensuing year obtained the highest honours in the power of Trinity College to bestow, namely, the gold medal for classics. He thought so little, however, of distinctions gained so easily, that he either forgot, or at all events neglected, even to apply for his gold medal till several years afterwards; when, happening to be in Dublin, and conversation turning upon the prize which he had obtained, he said, in a modest, casual kind of way, to a friend, "By the way, I never went after the medal; but I think, as I'm here, I'll go and see about it." This he did, and the medal was of course immediately delivered to its phlegmatic oblivious winner! He was a great favourite at college, for he bore his honours with perfect meekness and modesty, was kind and obliging to all desiring his assistance, and displayed, on all occasions, that truthful simplicity and straightforwardness of character, which, as we have already seen, he had borne from his birth. He was much beloved, in short, by all his friends and relations; and one of the latter, his uncle, Mr Connor, an Irish Master in Chancery, confidently predicted that "John William would live to be an honour to his profession and friends." In 1829, he joined his family, who were settled in Versailles, and spent some time there. In the ensuing year, his father, who possessed a first-rate capacity for business, was appointed Vice-treasurer and Paymaster-general of the forces in Ireland, and was obliged to reside in Dublin, whither he accordingly soon afterwards repaired with his family. His

son, John William, however, remained in London, having determined upon forthwith commencing his studies for the English bar: a step which his father and he had for some time before contemplated: as it appears, from the records of the Inner Temple, that he was entered as student for the bar on the 20th June 1827, which was during his second year at Trinity College. The facility with which he not only got through the requisite studies, but obtained every honour for which he thought proper to compete, allowed of his devoting much of his attention at that time to the acquisition of legal knowledge. He procured a copy, therefore, of Blackstone; that which had appeared a year or two before, edited by the present (then Sergeant) Mr Justice Coleridge,—the only edition of the Commentaries of which he approved, and which he used to the last,—and read it through several times with profound attention, as he has often told me; expressing himself as having been charmed by the purity and beauty of Blackstone's style, his remarkable power of explaining abstruse subjects, and his perspicuous arrangement. The next book which he read was, "Cruise's Digest of the Laws of England, respecting Real Property," in seven volumes octavo, a standard work of great merit; which, while at college, he read twice over, and continued perfectly familiar with it for the rest of his life. He also read carefully through nearly the whole of Coke upon Littleton, which he told me he found very "troublesome," and that he had expended much valuable time and attention on some of the most difficult portions, which he very soon afterwards found to be utterly obsolete, particularly mentioning those concerning "homage," "fealty," "knight-service," "wardship," &c. The above may seem a great undertaking for vacant hours at college, but will not appear to any of Mr Smith's friends to have been such to him, who read as rapidly, as he attended closely to, and tenaciously retained what he had read. It may here be mentioned, that in this particular, viz. reading law at

college, Mr Smith resembled Sir William Follett, who also devoted himself with ardour to the study of the law when at Cambridge, but did *not*, like Mr Smith, also gain the highest college honours; for Sir William never competed, or at all events never obtained college honours of any kind. Mr Smith commenced keeping terms at the beginning of 1830; and it was at the mess-table of the Inner Temple Hall that I, who had also shortly before come up from Edinburgh University for the same purpose, first had the happiness and the honour of becoming acquainted with my late distinguished friend. He was then in about his twenty-first year.

I distinctly recollect the first time of our meeting, which was at the aforesaid mess-table; and that his appearance struck me as that of a bashful and awkward person dull and taciturn, with a formal precise way of speaking, and a slight abruptness of manner. If Lord Bacon's saying be correct, that a good face is a *letter of recommendation*—poor John William Smith may be said to have come without a character! How little did I dream of the bright jewel hid in so plain and frail a casket: how often have I felt ashamed of my own want of discernment: what a lesson has it been never again to contract any sort of prejudice against a man from personal appearance! It was not till I had known him for nearly a year, owing partly to our unfrequent meetings, and his absence, that I began to be sensible of his superior talents and acquirements.

His personal appearance was, it must be candidly owned, certainly insignificant and unprepossessing. He was of slight make, a trifle under the middle height, his hair was rather light, and his complexion pale. He wore spectacles, being excessively near-sighted, and had a slight cast in his eyes, which were somewhat full and prominent. The expression of his features, at all events when in repose, was neither intellectual nor engaging, but improved when he was

animated or excited in conversation. His forehead, however, was, though retreating, lofty, and I have heard it characterised as intellectual. At the time of which I am speaking, he used to wear a white hat, placed so far back on his head, that it gave him, to a stranger, almost a ludicrous aspect. His utterance was slow, his demeanour solemn; and he would sit at dinner for a long time silent, till you would be surprised by his bursting into a short, sudden, but hearty laugh, when anything had been said which tickled his fancy; for I found out before long, that he had a great taste for the ludicrous, an exquisite perception of humour. When he shook hands with you, he placed his cold hand into yours, like a dead man's hand—even with his most intimate friends—instead of greeting you with a hearty cordial grasp or pressure.—How long again, this little circumstance misled me as to his supposed insensibility to the claims of friendship or affection! whereas the reverse was the case; for he was a most firm and devoted friend, and of an exquisite delicacy and sensitiveness of feeling.

He did not, at first, as the phrase is, *make way* with his companions, nor appear desirous of doing so. I recollect, on one occasion, that he and I remained the last at the dinner-table; and, though he sate opposite to me for some minutes, thoughtfully balancing his wine-glass in his hand, an empty decanter being between us, he spoke not a syllable; and I was watching him (his eyes being directed towards the floor) with an amused curiosity, on account of his apparent eccentricity, when he suddenly said, "Mr Warren, will you take a walk with me up Regent Street, or anywhere else, as it is such a fine evening?" What passed through my mind, on being thus unexpectedly encountered, was, "Well—he's a curiosity, and seems to know no one—so I will;" and, having said as much, we rose. He walked down the hall, and we took off our gowns in the ante-room,

and quitted the building, without his having uttered a syllable! I recollect feeling almost inclined to be offended. We then walked about the town till nearly nine o'clock, and I think he talked a little about France, and we compared notes together concerning Dublin and Edinburgh Universities. I quitted him, musing upon his quaint manner, and his solemn precision of language: but nothing that had passed between us gave me the idea of his being a person of superior ability or acquirements. He was, indeed, a shy and modest man. It was not, for instance, till after a seven years' intimacy, that I knew of the distinction which he had obtained at college; and on my asking him, one day, whether it was true that he had obtained the gold medal, he blushed, slightly moved his head aside, and, after a pause, said, in a tone rather even of displeasure than gratification, "Possibly I did!" and we dropped the subject.

In the year 1830, he entered the chambers of Richard Grainger Blick, Esquire, then one of the most eminent special pleaders in the Temple, and who has assured me that he always considered Mr John William Smith to be a remarkable man. Probably there never before entered the chambers of pleader or barrister, in the character of novice, a man of more formidable legal aptitude and acquirements. We have already seen the substantial and extensive character of his law-reading at college; but between leaving it, and entering Mr Blick's chambers, Mr Smith had read carefully over "from cover to cover" — such were his words to me — "Tidd's Practice," a standard book, in two closely printed, large octavo volumes, and also "Selwyn's Nisi Prius," in two similar volumes. He had not been long in chambers before he found that "he had not a sufficient knowledge of pleading to get any benefit from the business, which he saw;" wherefore he absented himself from chambers for some time, to enable him to read through the first volume of "Mr Chitty's Treatise on

Pleading;" and some time afterwards he again withdrew, for similar reasons, to read "Phillips on Evidence." Having obtained such an acquaintance with these two works, as to a person of inferior intellect or discipline might seem a complete mastery, he returned to chambers, able better to avail himself of the advantages afforded by Mr Blick's extensive practice; frequently surprising that gentleman by his mental vigour, and accurate and extensive legal knowledge. "I was very cunning," he has more than once said to me, "at chambers; for I soon saw how to go to work, better than the other pupils. They would be all for the 'heavy papers,' the great cases that came in, not caring for the shoal of small things that were continually appearing and disappearing. Now it seemed to me, that *these* constituted three-fourths of a lawyer's business, and that to be able to do *them*, was three-fourths of the battle: so I quietly let my fine gentlemen take all the great papers, while I did nothing but these same despised common things, till at length I really began to feel that I was improving, and learning a good deal of law. But as to the other sort of cases and papers, as soon as my fellow-pupils had done puzzling their brains over them, and written the opinions, or drawn the pleadings, and Mr Blick had revised them, and given them his *imprimatur*, I then read them over diligently, and with great profit: but you must remember that this was before the late revolution in pleading." All this he repeated to me one day, only a few months before his death.

He never studied under any other practitioner than Mr Blick, with whom, moreover, he spent only one year: yet such was his close application, his wonderful memory, his clear, vigorous, and disciplined understanding, and the soundness and extent of his previously acquired law, that on quitting Mr Blick, Mr Smith was really an able pleader, and had laid the basis of an extended, profound, and scientific knowledge of the law. Even at that early period, I frequently heard

his opinion deferentially asked by men far his seniors, and of considerable standing in business. On quitting Mr Blick, Mr Smith read a number of other law books, in his usual attentive and thorough manner, completely mastering both them and the "cases" contained in them, and of which, generally speaking, they were little else than digests or epitomes. He was a keen and acute logician, and felt great satisfaction in balancing the *pros* and *cons* of the reported cases, and testing the soundness of the judges' decisions, and the relevancy and force of the arguments of counsel which had led to them. Among the books he read about this time, he enumerated to me "Sanders on Uses and Trusts," a difficult book, he said, to master practically; "Ferne on Contingent Remainders," which he represented as likely to prove interesting to *any* educated man of intellect, fond of exercising it, who would take the trouble to read it; Sir Edward Sugden's * Treatises on "Vendors and Purchasers of Real Estates," and on "Powers," and Williams' "Saunders;" while "Comyn's Digest" was ever lying before him, the subject of continual reference, and with which he soon acquired an invaluable familiarity. He also read several books on Equity with great attention, and often said, that no one, who really knew law, could fail to feel a deep interest in Equity, and the mode of its operating upon law. The "Code Napoleon," too, he read carefully, and for many years. He had a copy of Justinian's Code, and Institutes, always lying on his mantelpiece, and which he was fond of reading. We have frequently conversed together on the subject of the extensive obligations of our Common Law to the Roman Law; to which he used to refer, in the absence of the books, with great facility and accuracy.

He was fond of Plautus, and would quote almost an entire scene, as accurately, and with as natural a fluency and zest, as another would have shown in reading off any of the scenes

in a popular English play; often accompanying his quotations with shrewd and ingenious critical comments. He was also very fond of the French Dramatists, particularly Molière, from whom I have heard him quote entire scenes with wonderful accuracy. You might have imagined him reading from the book, as I have several times myself observed, and heard others remark: and all this he did in a perfectly natural and unobtrusive way, as if merely to relieve an over-charged mind, and give pleasure to those whom he credited with inclination and ability to appreciate the excellencies which he pointed out. His memory seemed, indeed, equally tenacious of things important and unimportant; incapable, in short, of *forgetting* anything. I have heard him quote long-forgotten but once popular and laughable trash, ballads, squibs, epigrams, &c., till at length he revived in the listener such a sort of recollection of them, as made him imagine that Mr Smith must have recently committed them to memory for some special purpose, but for their appearing so really fresh and racy to him, and plainly suggested by the casual current of conversation.

He was about this time, and for years afterwards, a frequent visitor at my house; and never was any one, independently of my personal regard for him, more welcome; for his conversation was always that of a ripe and varied scholar, and fastidious *gentleman*. He was ever gay and animated as soon as he had recovered, which he quickly did, from the exhaustion of a long and severe day's work, and his fund of anecdote appeared inexhaustible. Never was any man further removed from being that insufferable social nuisance, a professed talker. Display of any kind was quite foreign to his nature; and whenever he chanced to encounter a person cursed with that propensity, he would sit in silence for a whole evening: not in the silence of vexation or pique, but of a man left at leisure to pursue his own thoughts, or calmly amuse himself with the characteristics of the

* Now Lord St Leonards,

chatterer. If, while thus occupied, unexpectedly interrupted, or appealed to by the aforesaid chatterer, or any one else, he readily answered, though certainly with a somewhat frigid courtesy. It was impossible for any one, of the least powers of observation, to fail of detecting in Mr Smith, though beneath a reserve and formality not easy to penetrate, a kind of scrupulous antique courtliness, suggesting to you a resuscitated gentleman of the school of Addison, particularly in his intercourse with ladies. He was caution personified,—never saying anything that required retraction or modification: and though you might guess the contemptuous estimate which he had formed of some particular person's character or doings, he rarely permitted himself to express it.

He would sometimes smile significantly at the recital, or witnessing, of some particular absurdity or weakness; but I think that no one ever heard him utter a hasty, harsh, or uncharitable judgment of anybody. He seemed, in fact, equally chary of giving praise or blame. No man would laugh louder, or longer, on hearing, or being told, of some signal and ludicrous miscarriage of another; but he would say nothing, except on rare occasions, and among his intimate friends—and even then, never anything severe or violent. Tell him, however, of anything really mean and unworthy, or let him have witnessed it, and no one could fail to see, calm and measured though Mr Smith's *language* might be, the profound contempt, or the lively indignation with which he regarded the delinquent and his delinquency. I fear, however, that I am digressing.

He and I commenced our careers as special pleaders about the same time, viz. in 1831; and not many days passed without our being at each other's chambers, borrowing one another's books, or going out to walk together, or conversing on law and other matters. I always listened to what he said on legal subjects, as to a master: he was so ready, so correct, so con-

cise, so judicious, that his suggestions, upon any case which I mentioned to him, were very valuable; and they were given with a heartiness of good-nature that made them doubly welcome. He was delighted to assist me or any other of his friends. We were a small circle, about that time, of some half-a-dozen; and I may take upon myself to say, that we all cheerfully recognised in him our superior—our *facile princeps*, from the first. Some of us set agoing a little weekly periodical, called "The Legal Examiner," to which he was a constant contributor—his papers being always characterised by point and precision, though the style was dry and stiff. It grieves me to say, that he met with no encouragement as a special pleader, consummately qualified as he was for success in that department, and scarcely ever to be found absent from his chambers; where he was at all hours, modest, patient, though sometimes a little dejected,—yet

True as the dial to the sun,

Although it be not shone upon.

I question whether, during this two or three years' bitter and disheartening probation, he made more than thirty, or at least forty guineas; his annual certificate for leave thus to do—nothing, cost him, nevertheless, £12. Yet I never once heard him, nor, I undertake to say, did any of his friends, express fretfulness or impatience at his disheartening lack of employment. He manifested, on the contrary, a quiet fortitude that was touching to witness. I recollect him once, however, when we were conversing on the subject, saying rather pensively, "If one has not connections, and cannot make them, it is next to impossible to get any business."

The professional public possess conclusive and enduring evidence of the admirable use which he made of his time, during the first year or two of his essaying to practise as a pleader; for in July 1834, two months after having been called to the bar, he gave to the world a work which, as soon as it had become known, raised him to the highest rank of legal writers. The

more it was read or referred to the higher was the estimate formed of its writer's intellect and learning, alike by the bench and the bar; for he had most discreetly, yet boldly, chosen a subject of great difficulty and importance, properly treated by no work extant, and which gave him opportunity of supplying a long-acknowledged deficiency in professional literature. He undertook, in fact, to produce a comprehensive practical treatise, with-in an exceedingly moderate compass, on "Mercantile Law:" and he succeeded to admiration—did this neglected young man of scarce twenty-five years old—in producing, entirely unassisted, a work signally calculated to attain the proposed object; condensing into a small space, and with almost unerring accuracy, a great amount of exceedingly difficult law, beautifully and perspicuously arranged, so as that even laymen might read as they ran, and receive guidance in the most perplexing exigencies of business, while the ablest lawyers might safely refer to the pages of the "Compendium" for a terse and true statement of the result of many conflicting decisions, and a luminous exposition of the *principles* which ought to govern the administration of commercial law. The calm, practised skill with which this young unknown jurist moved about in these regions of subtle intricacy—*inter apices juris*—excited the cordial admiration and respect of all competent judges. He was manifestly a master of his subject; and having quietly detected important but unoccupied ground, had possessed himself of it with skill and resolution:—and this he did within little more than two years after he had quitted the scene of his solitary year's pupilage. Within six years this book has passed through three large editions; and a fourth is, it is believed, in preparation, which will comprise a great number of its departed author's own additions and emendations, continued up to within two or three months of his decease. Not only in this country, but in the United States of America, is this valuable work deservedly held, at this mo-

ment, in the highest estimation, as practically the only book of its kind. A glance at the brief Preface will suffice to show to a competent judge, whether lay or professional, at once the real and peculiar difficulty of the undertaking, the author's exact and happy illustration of the sources of that difficulty, and the simplicity and accuracy of his style.

"The Mercantile Law is in one respect better adapted to compression than the Law of Real Property; inasmuch as the reasons upon which the former is based can be explained more shortly than those which support the latter. The reasons upon which our Law of Real Property is founded, are, generally speaking, historical; and part of history must therefore be recounted, in order to explain them clearly and philosophically; while the Mercantile Law is deduced from considerations of utility, the force of which the mind perceives as soon as they are pointed out to it. For instance, if a writer were desirous of explaining why a rent-service cannot be reserved in a conveyance, by a subject, of lands in fee-simple, he would be obliged to show the feudal relations that existed between lord and tenant, the nature of sub-infeudations, and how the lord was injured by them, in such his relation to his tenant, how the statute *quia emptores* was enacted to prevent this injury; in consequence of which statute a tenure, without which no rent-service exists, cannot be raised by a conveyance from one subject to another, in fee-simple. In like manner, the explanation of a recovery, of a fine, of a copyhold, of an estate in ancient demesne, of an use, of a trust, would require a process of historical deduction. But when the reader is told, that the drawer of a bill of exchange is discharged, if timely notice be not given him of its dishonour; because, without such notice, he might lose the assets he had placed to meet it in the drawee's hands; or, that if A holds himself out as B's partner, he will be liable as such, because he might else enable B to defraud persons who had trusted him upon the faith of the

apparent partnership and joint responsibility: when these reasons, and such as these, are given, every man at once perceives their cogency, and needs not to be told *how*, that he may know *why*, the law was settled on its present footing. The fitness of this subject for compression is, therefore, hardly questionable. The difficulty of compressing it is, however, extreme. The author who attempts to do so, must continually keep in view a triple object, must aspire at once to clearness, brevity, and accuracy; a combination so difficult, that its difficulty may, it is hoped, be fairly pleaded in excuse for some of the deficiencies and imperfections which the reader may discover in the following pages."

After a luminous and elegant introductory account of the rapid growth and development of mercantile law, the author thus announces the convenient and comprehensive plan of his work:—

"This treatise will be divided into four books. The first, concerning *Mercantile Persons*; the second, *Mercantile Property*; the third, *Mercantile Contracts*; the fourth and last, *Mercantile Remedies*; a method which appears the simplest and most comprehensive; since it includes, under a few heads, the description of those by whose intervention trade is carried on; of that which they seek to acquire by so employing themselves; of the arrangements which they are in the habit of adopting, in order to do so effectually; and of the mode in which the proper execution of those arrangements is enforced."

A striking evidence of the value of this work, the soundness of his opinions, and the importance attached to them in the highest judicial quarters, was afforded by the first number of the Reports of the Court of Exchequer, published after his death, where (in *Tanner v. Scovell*, 14 *Meeson and Welsby*, 37), the Lord Chief Baron, after time taken to consider an important question of mercantile law, delivered the judgment of the Court in expressed conformity with the doctrine which Mr Smith has laid down in his "Mer-

cantile Law," and in opposition to the opinion of the late learned Mr Justice Taunton!

To retrace our steps, however, for a moment: Mr Smith at length despaired of getting business under the bar, and became weary of sitting a prisoner at chambers, in vain expectation of it. His rooms and mine were directly opposite to each other, on the same floor; and rarely or never was a knock heard at his door, except that of some friend coming either to ask his able and willing assistance, or chat away a weary half hour. Towards the close of 1833, he announced to his friends that he contemplated trying his fortune at the bar, and was easily persuaded, with that view, to commence attendance at a professional debating society, called "The Forensic," which, confined to barristers and students for the bar, and established so long ago as 1815, has numbered among its members almost every lawyer of eminence who has appeared since that year, including Sir William Follett, and Mr J. W. Smith. He entered this society on the 29th January, 1834; and I well recollect his first essay at addressing it. It was upon the discussion of a legal question. He was evidently nervous when he rose, for the colour quite deserted his cheek. His manner was cold, dry, and formal, and sufficiently uninteresting and uninviting. We were all, however, soon struck by the book-like precision of his language, the clearness and closeness of his reasoning, and the extent of his legal knowledge. He spoke for about ten minutes; and, having risen amidst a half-suppressed titter, sat down amidst earnest cries of "Hear, hear, hear!" He afterwards spoke pretty regularly, especially upon legal questions; and those who, in due course, were appointed beforehand to argue against him, felt it expedient to come particularly well prepared!

Shortly before he was called to the bar, he said to me, with a timid, dejected air, "It is a bold step; but I really don't see what else is to be done. Why should I sit any longer

perishing in chambers? Besides, my 'Mercantile Law' will be out in a month or two, and if it succeed, it may possibly give me a lift—so I shall try it." He was accordingly called to the bar on the 2d May 1834, selecting the Oxford Circuit and the Hereford and Gloucester Sessions. "There are only two ways," I heard him say, (quoting the well-known dictum of a late able judge), "of getting on at the bar, Pleading or Sessions. I have failed in the former, I shall now try the latter. *Flectere si nequeo superos, Acheronta movebo!*" I was, I confess, amongst those of his friends who were not sanguine as to his prospects of success at the bar, regarding him as unlikely to attract favourable notice in court practice. Shortly after he had attended at the Sessions, however, he began to obtain a little employment in petty cases there; and, contrary to expectation, became successful in defending prisoners: his acuteness, vigilance, ingenuity, and legal knowledge—particularly of the law of evidence—became more apparent in every succeeding case intrusted to him. In spite of the dry formality of his manner, he soon attracted the *understanding* of his hearers, exhibiting great caution and judgment in dealing with the evidence, his tenacious memory here standing him in great stead. His start at Sessions, however, seemed likely to lead to nothing on the civil side at the assizes—where his reception was sufficiently disheartening. He attended regularly, nevertheless, both assizes and sessions; during his stay in town labouring with indefatigable energy in the acquisition of law. In 1835, he composed a lucid little treatise on the Law of Practice, entitled, "An Elementary View of the Proceedings in an Action at Law," distinguished by simplicity, correctness, and condensation, and calculated to give students a perspicuous view of an extremely dry and troublesome subject. This also has become a standard book. In 1836 he wrote another little work—one upon Patent Law, explanatory, in a practical way, of a statute which had just before been passed, and had ef-

fected important alterations in that department of law. He told me that "he did not like to throw a chance away," and this "might possibly get him some briefs in Patent cases;" but I suspect that in this he was disappointed. In the same year he and I occupied our long vacation in preparing together a work entitled "Select Extracts from Blackstone's Commentaries, carefully adapted to the use of schools and young persons." We both took great pains with this book, and it has had a large sale; but for some whimsical reason or other he would not allow his name to appear, though particular in retaining a share in the copyright.

Neglected and discouraged though he was, he continued to prosecute his studies with patient energy, appearing to me scarcely ever to spend an idle moment. He attended frequently the Courts at Westminster, and on returning to chambers would spend the rest of the day in reading the constantly-accumulating Reports, and noting their more important contents in his favourite text-books. He constantly sat up till a late, or rather early hour in the morning, and would frequently, on awaking, lie reading in bed till noon, when he would rise and take a sparing breakfast.

I recollect calling upon him one gloomy day in December, about the time of which I am writing, to ask him to accompany me home to dinner, as he generally did once or twice a-week. He suffered a martyrdom from toothache; and on this occasion had passed a miserable night from that cause, not having slept at all, and his swollen face betokened the violence of the fit. He had, nevertheless, got up much earlier than usual to oblige one of his friends, for whom he had promised to draw some pressing and difficult pleadings, which he was finishing as I entered. When he had despatched his clerk with them, he requested me to sit down and take a cup of tea with him, as he was suffering both from pain and fatigue and *ennui*. I never saw him in so desponding an humour. He promised to

dine with me on the morrow, provided I would sit with him for an hour "gossiping," for he said that he could not sleep, he could not sit still, he could not read or write. I complied with his request, and stayed with him a long time. In the course of conversation, I recollect him saying, that "He supposed he was not to get on in the law; that he could not fight against the want of a connection." I reminded him that it was surely premature to hold such language, and that he must bide his time,—when he interrupted me by saying, shaking his head, "Ah, but while the grass grows the steed starves." Presently he said, rather suddenly, "Should you be surprised to hear of my entering the church?" "The church!" I echoed with astonishment.—"What do you see so wonderful in the notion of my going into the church?" said he gravely. "Do you think me unfit for it?"—"Not at all; but what I wonder at is, that you should dream of quitting the bar."—"Why not, if I find that it will not afford me a living? Let me tell you, that I am very partial to the study of Divinity, and have read a good deal of it, much more than you would suppose. I think I should like composing sermons, though it is possible that they might not be popular; and I suppose you will not deny that Divinity is a nobler study than law?" He said much more in the same strain, which led me to believe that the subject had for some time occupied his thoughts, and that he had begun seriously to contemplate quitting the bar—at all events, if another year should leave him as little likely to succeed in obtaining practice, as that which was on the eve of closing. Many of even his intimate friends were unaware of his partiality for Divinity, and the extent to which he had studied it; for he was reserved on such matters.

I once told him that I had read the whole of "Pearson on the Creed;" on which, in his usual cold dry way, he replied, "So have I, and carefully. I liked it much. And I'll tell you another book that I have read still more carefully, both in Latin and

English—Mosheim's 'Ecclesiastical History.'" I have heard him say the same of Hooker's "Ecclesiastical Polity." We have often discussed the merits of Jeremy Taylor, Barrow, and South; the last of whom was a favourite of his. He had a surprising knowledge of the Old and New Testaments. One of his oldest and ablest friends, and whom he appointed one of his executors, recently alluded, in conversation with me, to this circumstance, adding, "Smith read the Bible as few but he could read it; and remembered it, as few but he could remember it." I have occasionally myself had evidence of his exact knowledge of recondite portions of the Old Testament; but, as already intimated, he was always cautious and sparing in scriptural allusions or quotations. Since writing the foregoing sentences, a learned friend has informed me, that Mr Smith, about two years before his death, had entered into a prolonged and ardent discussion with him on the subject of the *Apostolical Succession*; insisting that no one who did not assent to that doctrine was in reality, or could be conscientiously, a member of the Church of England. Again and again, during a considerable interval of time, whenever they met, Mr Smith pertinaciously renewed the discussion,—his friend for some time doubting whether Mr Smith had any other motive than to amuse himself with the matter as one of mere logical exercise, but being at length satisfied that he was sincerely expressing his own opinions. To a brother of this gentleman Mr Smith became closely attached on discovering the extent and depth of his knowledge of divinity, a subject on which they conversed whenever they could, Mr Smith exhibiting, on all such occasions, the utmost zest and energy.

I have already intimated the extent of his acquaintance with general literature; to which it may be here added that he possessed a correct and extensive knowledge of history, ancient and modern. He knew it, and its true uses; and was equally conversant with its minute details, and its general

scope and bearing, as illustrative of the practical operation of political principles and doctrines. He always, in short, appeared to me to be a man whose first anxiety in all matters was to obtain a thorough knowledge of details, of facts; and then experienced delight in contemplating and reflecting upon them with a view to the discovery or detection of some leading principle of action or conduct involved in them. Such grave matters, however, did not alone occupy him; for I never saw a more eager and indiscriminate reader of even the ephemeral trash loading the shelves of circulating libraries. Scarcely a novel, play, or magazine appeared, which he did not take up, and, whenever they happened to be mentioned, show as complete a knowledge of them as if they had been worthy of it. I have often laughed at him on these accounts; he generally receiving my sallies with a sort of piqued silence, or simply saying, "It amuses me." I think that this circumstance is well accounted for by Mr Phillimore—that Mr Smith's over-tasked mind found light and easy narrative of any kind a relaxation.

Early in the year 1835 appeared a work on legal education, in which was enforced the advantage to the student and practitioner, of early mastering, as so many *nuclei* of future legal acquisitions, a few of the "*leading cases*" in the Law Reports, which suggested to Mr Smith the idea of writing a book under the name of "*Leading Cases*."* He was engaged upon it from about the middle of 1835 till the early part of 1837. There was no book of the kind extant. The idea was felicitous; but much learning and judgment were requisite to work it out practically. Mr Smith proved himself, however, fully equal to the undertaking. Though in 1835 and 1836 he composed and published, as we

have seen, two other minor professional works, he was all the while quietly elaborating this more important performance, the first volume of which (in large 8vo) he published in March 1837. His plan was, to select from the recognised Law Reports some of the chief Cases which had been decided in the Common Law Courts, and which were of such superior importance as to have become "*Leading Cases*," i.e. in his own words, "involving, and being usually cited to establish some point or principle of real practical importance." Each of these he made the basis of an elaborate disquisition, in which, to continue his own explanation, "in order that the consequences of each 'Case' might be understood, and its authority estimated as easily as possible, *NOTES*" were "subjoined, in which were collected subsequent decisions bearing on the points reported in the text, and in which doctrines having some obvious connection with them," were "occasionally discussed," . . . "without allowing them to digress so far from the subject matter of the text as to distract the reader's mind from that to which they ought to be subsidiary."

It is difficult to speak in terms too highly commendatory of this masterly performance—one quite of a judicial tone of investigation—and which, immediately upon its appearance, arrested the attention of all persons competent to form an opinion on the subject, as a sterling and permanent addition to the highest class of legal literature, and entitled its author to be regarded as really a first-rate lawyer. Almost all the judges, and the most eminent members of the bar, wrote to him in terms of warm respect and approbation; and to this moment evince the same appreciation of the excellence of the work by quoting it, not more frequently in the arguments of counsel than in the most elaborate judgments delivered by the bench. It is indeed difficult to know which more to admire—the great extent and unerring accuracy of his law, or the clearness and precision of his reasoning, render-

* He appended the following note to the Preface to the first edition of his *Leading Cases*. After saying, "The plan of this work is believed to be new," he proceeded:—"It is, however, only candid to say that it is not original; the idea having been suggested by cap. 12 §.6 of Mr Warren's *LAW STUDIES*."

ing simple and easy of apprehension the most obscure and perplexing subjects. The "Cases" were selected with great judgment out of the many thousands contained in the Reports; and whether he confirms, or questions, or illustrates the doctrine established by the case upon which he is annotating, he exhibits the same modest freedom, masterly ease, accuracy, and subtlety of discrimination, distinctness of thought, and complete familiarity with the progress of legal decision. Every note, in short, is a model of legal analysis; and the style, also, is pure, simple, terse, and perspicuous. He dedicated this work to his former tutor Mr Blick: and I recollect our having a long discussion upon the original terms of the dedication; which were these, "To Richard Granger Blick, Esq., this work is inscribed by his obliged friend and pupil." I suggested the insertion of the word "*former*," before "*pupil*:" without which, I said, it might appear that the work had been written by one still in *status pupillari*. He was a man always difficult to convince of the impropriety of anything on which he had once determined. He quitted my chamber unconvinced by what I had said: but the dedication afterwards appeared in accordance with my suggestion. I recollect being highly amused by the pertinacious ingenuity with which he defended his own view of the case.

The fame of this work was not, however, confined to this country, but soon reached the United States of America, where it immediately met with the most flattering reception, and is at this moment accounted an established text-book, and quoted as an authority by their best writers and judges. I recollect Mr Smith one day coming to me, and asking me, with a quaint mixture of mystery, pleasure, and embarrassment, if I would "be sure not to mention to any one what he was going to tell me:" and on my promising him that I would not, he showed me a letter which he had just received from that eminent American jurist, Mr Justice Story, himself one

of the most elaborate and successful legal writers of his age, and whose works are continually cited by both Bench and Bar, with the utmost respect, in his own and in this country. The following is an extract from the letter in question:—

"I consider your work among the most valuable additions to judicial literature which have appeared for many years. The 'Notes' are excellent, and set forth the leading principles of the various cases in the most satisfactory form, with an accuracy and nicety of discrimination equally honourable to yourself and to our common profession. I know not, indeed, if any work can be found which more perfectly accomplishes the purpose of the author. . . . I hope that your life may long be spared, so that you may be able to devote yourself to similar labours for the advancement of the learning and honour of the profession." Alas! both Mr Justice Story and Mr Smith, each a great ornament to his country, died within a few months of each other. When I congratulated my friend on this encomium, from so competent and eminent a judge, he replied modestly—" *Laudari à laudato viro* is certainly pleasing."

So great was the demand for this work, that Mr Smith's publisher urged him to proceed as quickly as possible with the second volume, which he had, in his preface to the former one, announced his intention of doing, in the event of the first portion of his labours meeting with the approbation of the profession. He accordingly at once set to work upon the second volume; and although he was beginning to have serious calls upon his time, owing principally to his having accepted the appointment, in November 1837, of Common Law Lecturer to the Law Institution, such were his energy and industry, that by the 12th of May 1838, he had succeeded in bringing out the first part of the second volume, which was fully equal in execution to the first. While, however, he was receiving with his usual modesty the congratulations of his

friends on this solid addition to his reputation, he experienced a sort of *checkmate* which embarrassed and utterly confounded him; occasioning him infinitely greater annoyance and mortification than he ever experienced in his life. A highly respectable firm of law booksellers, the publishers of his "Compendium of Mercantile Law," and to whom he had also offered the publication of his "Leading Cases," which they had declined, but without having hinted the slightest objection to the principle of selecting the "Cases," which he had explained fully to them, suddenly took it into their heads, that in thus taking some few cases from "Reports" published by them, as mere texts for his masterly legal dissertations, he had been guilty of *PIRACY*! and they actually filed a bill in Equity against him and his publisher, to restrain them "from printing, selling, or publishing any copies of the first part of the second volume." I never saw Mr Smith exhibit such intense vexation as that occasioned him by this proceeding: he felt at once his own honour impugned, and that he might have seriously compromised the character and interests of his publisher. Such, however, was the confidence in the justice of his case felt by the latter, that he resolved to resist this attack upon his own rights and those of Mr Smith to the last; and he did so, at his own expense, and with triumphant success. The Vice-Chancellor of England (Sir Launcelot Shadwell), after an elaborate argument, refused to grant the desired injunction — expressing his decided opinion "that on the substance of the case, and on the conduct of the plaintiffs, (the publishers in question), they were not entitled to the injunction which they had asked." Against this decision the plaintiffs immediately appealed to the present Lord Chancellor, Lord Cottenham, who, after another elaborate argument, and taking time to consider, delivered a luminous and masterly judgment confirming the decision of the Vice-Chancellor, triumphantly vindicating the propriety of both author and publisher's con-

duct, and supporting the right which Mr Smith had thought proper to exercise; and his lordship dismissed the appeal with costs.*

Thus ended, what has always appeared to me, an absurd and cruel, and as the event proved, expensive experiment on the part of the plaintiffs. Only one of them now carries on the business, and is a gentleman of such high respectability, and also liberality in his dealings with the profession, that I feel satisfied he had really little part in this most unsatisfactory proceeding. Mr Smith's right to continue his selections from the Reports, for the purpose of annotation, having been thus established, and the excellence and importance of his labours conspicuously made known (had that, indeed, been necessary) to the entire profession, he at once proceeded with, and in due time completed the remaining portion of the second volume; and for the sake of legal science, it is to be lamented that there this admirable work ended. Mr Smith felt no exultation at the defeat of this most thoughtless and unjustifiable attack upon him, nor evinced any pleasure in the friendly congratulations showered upon him. His sensitive mind had, indeed, been thoroughly shocked by the imputation which had been sought to be fixed upon him; and the only feeling on the subject which he ever expressed to me, or appeared to entertain, was one of calm indignation. I must say that in this I think he was abundantly justified. He repeatedly told me that he should never write another book, for "that he had had quite enough of it." As it happened, he never did; nor do I think that he would ever have done so, even had his career not been cut short by death. Whenever works of solid interest and importance in general literature appeared, Mr Smith was eager to peruse them, and seldom failed in doing so. I recollect him one day borrow-

* The Counsel for the plaintiffs was the present Vice-Chancellor Knight Bruce, the late Mr Jacob, Q.C., and Mr Russell, Q.C.; for the defendants, the present Vice-Chancellor Wigram, Mr Wilcox, Q.C., and the author of this Memoir.

ing from me the first volume of Mr Hallam's "Introduction to the Literature of Europe in the 15th, 16th, and 17th Centuries," which was published alone early in 1837. He read it with great interest, and reviewed it ably in "Blackwood's Magazine"—his only contribution to its pages, in the No. for May 1837.

He was about the same time reading largely in the State Trials, and frequently conversed with me upon their interesting character, wondering that they had so seldom been made really available for the purposes of amusing literature. He himself selected one of the trials as one possessed of peculiar capabilities, and intended to have completed it for "Blackwood's Magazine" but was prevented by his other labours. These lighter occupations, however, were soon interfered with by his appointment, as already intimated, to be Common Law Lecturer to the Law Institution in Chancery Lane, in November 1837. This he owed entirely to his own merit, and the reputation which his writings had already gained him in the profession. I knew that fears were entertained by the directors of that important institution, lest his unpopular manner should stand in the way of his usefulness as a lecturer; but, aware of his rare intellectual and legal qualifications, they wisely resolved to try an experiment, which completely succeeded. I recollect accompanying him, at his own request, to deliver his first lecture, at the close of 1837. He was somewhat fluttered when he made his appearance before his audience, but at once commenced reading with apparent calmness a very able introductory lecture, which soon arrested attention, and caused the committee who sat before him to congratulate themselves on their selection. He held this appointment till March 1843, during which time he delivered a great number of lectures to increasingly attentive auditories; and as he read over several portions of them to me, I am able to say that, in my humble judgment, they were of the highest value for their clear, close, and correct expo-

sition of some of the most difficult branches of the law. He had a great talent for communicating elementary information; and even the most ignorant and stolid of his listeners could scarce avoid understanding his simple and lucid explanations of legal principles. One series of his lectures on "The Law of Contracts," has just (1846), been published* *verbatim* from his MSS. as they were delivered, and fully justifies the opinion here expressed. He never designed them for publication, but solely for delivery to the attorneys' and solicitors' clerks, for whom the lectureship was founded; yet it is doubtful whether there be any book extant in which the difficult and extensive subject of contracts is—and that within the space of ten short lectures—comparably treated. The most youthful student, with only moderate attention, can acquire from it, in a short time, correct general notions calculated to be of infinite service to him, while able practitioners will regard it as at once concise, accurate, and practical, and evincing a thorough mastery of the subject in all its branches. In the words of his editor, "The lectures embody the chief principles of that branch of the law, and will be found equal to any of the former productions of the author for that clear, concise, and comprehensive exposition of his subject, which has characterised his works, and insured the vitality of his reputation; popularising a branch of law which peculiarly affects the ordinary business of life; divesting it of the superfluities with which it is often encumbered; educing the great maxims and broad rules by which it is moulded, and unravelling the perplexity in which an occasional conflict of judgments had from time to time involved it." I am not aware that Mr Symonds had any personal knowledge of Mr Smith, so that the more valuable is his concluding eulogium,—“That the profession already ranks him as among the most gifted of its writers, and most learned

* In one vol. 8vo, pp. 386, Benning & Co. Fleet Street, accompanied by Notes by Jelling C. Symons, Esq., Barrister-at-Law.

of modern lawyers." As an example of the ease and precision with which he elucidated the most difficult subjects, and brought them to the level of youthful capacities, I select the following brief passage on a most practically important subject, that of the "consideration" essential to support a valid simple contract, according to the civil law and that of England.* After explaining the doctrine of "*Nudum pactum*," he thus proceeds:—

"Now, with regard to the question,—*What does the law of England recognise as a consideration capable of supporting a simple contract?* the short practical rule" [after adverting to a well-known passage in Blackstone, for which he substitutes his own definition] "is, that *any benefit accruing to him who makes the promise, or any loss, trouble, or disadvantage undergone by, or charge imposed upon, him to whom it is made, is a sufficient consideration in the eye of the law to sustain an assumpsit.* Thus, let us suppose that I promise to pay B £50 at Christmas. Now, there must be a *consideration* to sustain this promise. It may be that B has lent me £50; here is a consideration by way of *benefit or advantage* to me. It may be that he has performed, or has agreed to perform, some laborious service for me; if so, here is a consideration by way of *inconvenience to him*, and of advantage to me at the same time. It may be that he is to labour for a third person at my request; here will be *inconvenience to him*, without advantage to me: or it may be that he has become surety for some one at my request; here is a *charge* imposed upon him: any of these will be a good consideration to sustain the promise on my part.

"Provided there be *some benefit* to the contractor, or *some loss, trouble, inconvenience or charge* imposed upon the contractor, so as to constitute a *consideration*, the courts are not willing to enter into the question whether that consideration be ADEQUATE in value to the thing which is promised in exchange for it. Very gross inade-

quacy, indeed, would be an index of fraud, and might afford evidence of the existence of fraud; and fraud, as I have already stated to you, is a ground on which the performance of any contract may be resisted. But if there be no suggestion that the party promising has been defrauded, or deceived, the court will not hold the promise invalid upon the ground of mere *inadequacy*; for it is obvious, that to do so would be to exercise a sort of tyranny over the transactions of parties who have a right to fix their own value upon their own labour and exertions, but would be prevented from doing so were they subject to a legal scrutiny on each occasion, on the question whether the bargain had been such as a prudent man would have entered into. Suppose, for instance, I think fit to give £1000 for a picture not worth £50: it is foolish on my part; but, if the owner do not take me in, as the phrase is, no *injury* is done. I *may* have my reasons. Possibly I may think that I am a better judge of painting than my neighbours, and that I have detected in the picture the touch of Raphael or Correggio. It would be hard to prevent me from buying it, and hard to prevent my neighbour from making the best of his property, provided he do not take me in by telling me a false story about it. Accordingly, in the absence of fraud, mere *inadequacy* of consideration is no ground for avoiding a contract."†

Those who are acquainted with the practical difficulties of this subject, will best appreciate the cautious accuracy, and yet elementary simplicity and clearness which characterised his teaching; he being then, be it remembered, little more than twenty-eight years of age.

His writings having thus led to his being placed in a situation where he had ample opportunities for exhibiting legitimately to the profession his great legal acquirements and abilities, it was not long before he became sensible of making his way, but gradually, nevertheless, into business. He had given up

* But not that of Scotland. BELL'S *Princip. Law of Scotland*, p. 4, (4th Edition).

practising at sessions some time before, and resolved thenceforth to address himself entirely to civil business in London, and at the Assizes. The late Mr Robert Vaughan Richards, Q.C.,* then one of the leaders of the Oxford Circuit, and himself an eminent lawyer and accomplished scholar, was one of the earliest to detect the superior qualifications of Mr Smith, and lost no fair and legitimate opportunity of enabling him to exhibit his abilities, by naming him as an arbitrator, when the most important causes at the Assizes had been agreed to be so disposed of; and he invariably gave the highest satisfaction to both parties—the counsel before him, in arbitrations both in town and country, finding it necessary to conduct their cases as carefully as if they were before one of the astutest judges on the bench. Though many important causes were thus referred to him, and were attended by some of the most experienced members of the bar, I am not aware of any instance in which his decisions were afterwards reversed by, or even questioned before, the courts. When once he had obtained a fair “start” on his circuit, he quickly overcame the disadvantages of a person and manner which one *might* characterise more strongly than as unprepossessing. Few cases of great importance were tried in which Mr Smith was not early engaged; and the entire conduct of the cause, up to the hour of trial, confidently intrusted to his masterly management. Amongst many others may be mentioned the great will case of *Panton v. Williams*, that of James Wood of Gloucester, and other well-known cases. He was, without exception, one of the ablest *pleaders* with whom

I ever came into contact: equally quick, sure, and long-headed in selecting his point of attack or defence with reference to the ultimate decision, skilfully escaping from difficulties, and throwing his opponent in the way of them, and of such, too, as not many would have had the sagacity to have foreseen, or thought of speculating upon.

A recent volume of the Law Reports contains a case which, though his name does not appear in it, attests his appreciated superiority. It involved a legal point of much difficulty, and was so troublesome in its facts as to have presented insuperable obstacles to two gentlemen successively, one under the bar, the other at the bar, and both eminent for their knowledge and experience. Their pleadings were, however, successfully demurred to; and then their client was induced to lay the case before Mr Smith, who took quite a new view of the matter, in accordance with which he framed the pleadings; and when the case came on to be argued by the gentleman, (an eminent Queen’s Counsel), who recently mentioned it to me, he succeeded, and without difficulty. “I never,” said he, “saw a terribly be-puzzled case so completely disentangled—I never saw the real point so beautifully put forward: we won by doing little else than stating the course of the pleadings; the court holding that the point was almost too clear for argument.” I could easily multiply such instances. Mr Smith had a truly astonishing facility in mastering the most intricate state of facts; as rapidly acquiring a knowledge of them, as he accurately and tenaciously retained even the slightest circumstances. He seldom used precedents, (often observing that “no man who understood his business needed them, except on very special occasions;”) and, though a rapid draughtsman, it was rarely, indeed, that he laid himself open to attack in matters of even mere formal inaccuracy, while he was lynx-eyed enough to those of his opponents. When he was known to be the party who had demurred, his adversaries began seri-

* To this gentleman he dedicated, in 1843, the third edition of his “*Mercantile Law*.” Within a very few months of each other both of them died.—Mr Richards himself having, as he once told me, ruined his health by his intense and laborious prosecution of his profession, from which he had found it necessary to retire a year or two before his death. His brother, also, Mr Griffith Richards, Q.C., a very able member of the Chancery Bar, recently died under similar circumstances.

ously to think of *amending*! When his cases were ripe for argument *in banc*, he took extreme pains to provide himself with authorities on every point which he thought it in the least probable might be started against him by either the bench or the bar. I told him, on one of these occasions, that I thought "he need not give his enemy credit for such far-sighted astuteness."—"Oh," said he, quickly, "never undervalue an opponent: besides, I like turning up law—I don't forget it, and, as Lord Coke says, it is sure to be useful at some time or another."

In court, he was absorbed in his case, appearing to be sensible of the existence of nothing but his opponent and the bench. He was calm and silent, rarely, if ever interrupting, and then always on a point proving to be of adequate importance. He did not take copious or minute notes on his brief, but never missed anything of the least real significance or moment. When he rose to speak, his manner was formal and solemn, even to a degree of eccentricity calculated to provoke a smile from the hearers. His voice was rather loud and hard, his features were inflexible, his utterance was exceedingly deliberate, and his language precise and elaborate. His motions were slight, and, such as he had, ungraceful; for he would stand with his right arm a little raised, and the hand hanging down passively by his side for a long time together, except when a slight vertical motion appeared—he, the while, unconscious of the indication—to show that he was uttering what he considered very material. When a question was put to him by the judges, he always paused for a moment or two to consider how best he should answer it; and if it *could* be answered, an answer precise and pointed indeed he would give it. He afforded, in this instance, a contrast to the case of a gentleman then at the bar, about whom he has often laughed heartily with me. "Whenever," said he, "the judges put a question to —, however subtle and dangerous

it may be, and though he evidently cannot in the least degree perceive the drift of it, before the words are out of their mouths, he, as it were, thrusts them down again with a confident good-humoured volubility, a kind of jocular recklessness of law and logic, which often makes one wonder whether the judges are more inclined to be angry or amused; nay, I have once or twice seen one of them lean back and laugh outright, poor — looking upon that as an evidence of his own success!" How different was the case with Mr Smith is known to every one who has heard him argue with the judges. Nothing consequently could be more flattering than the evident attention with which they listened to him, and most properly; for he never threw away a word, never wandered from the point, and showed on all occasions such a complete mastery of his facts, and such an exact and extensive knowledge of the law applicable to them, as not only warranted but required the best attention of those whose duty it was to decide the case. His manner was respectful to the bench, without a trace of servility; and to those associated with him, or opposed to him, he was uniformly courteous and considerate. When he had to follow his leader, or even two of them, he would frequently give quite another tone to the case, a new direction to the argument, and draw his opponents and the judges after him unexpectedly into the deeper waters of law. He was also distinguished by a most scrupulous and religious fidelity and accuracy of statement, whether of cases or facts, and documents, especially affidavits. The judges felt that they might rely upon every syllable that fell from him; that he was too accurate and cautious to be mistaken, too conscientious to suppress, garble, mislead, or deceive, with whatever safety or apparent advantage he might have done so.

I have heard him say, that he who made rash and ill-considered statements in arguing in a court of justice was not worthy of being there, and

ought to be pitied or despised, according as the fault arose from timidity and inexperience, or confirmed carelessness or indifference, or fraudulent intention to deceive. It was in arguing before the court *in banc*, that Mr Smith so much excelled, being equally lucid in stating and arranging his facts, logical in reasoning upon them, and ready in bringing to bear on them the most recondite doctrines of law. He was certainly not calculated to have ever made a figure at Nisi Prius; yet I recollect one day that one of the present judges, then a Queen's Counsel, was talking to me in court as Mr Smith entered, and said, "What think you? your friend Smith has been opposing me to-day in a writ of inquiry to assess damages in a crim. con. case." I laughed. "Ay, indeed,—I thought myself that if there was a man at the bar more unfit than another for such a case, it was Smith; but I assure you that he conducted the defendant's case with so much fact and judgment, that he reduced my verdict by at least £500! He really spoke with a good deal of feeling and spirit, and when the jury had got accustomed to him, they listened most attentively; and the result is what I tell you."

Following the course of his professional progress, in 1840 Mr Smith was appointed a revising barrister for one of the counties on his circuit, by Mr Baron Alderson, who was personally a stranger to him, and named him for the office solely on account of his eminent fitness for the post. He held it for several years, giving unmixed satisfaction to all parties, until precluded from further retaining it, in consequence of changes in the revising arrangements effected by the late statute.

On one occasion, while he was waiting, apparently in vain, for the chance of professional employment, and not long before the occurrence of that moment of despondency already mentioned, when he contemplated quitting the profession, he and I were walking in the Temple Gardens, and he said, "Now, if I were to choose my future life at the bar, I should of

all things like to have, and should be delighted with a first-rate pleading business; not made up of many petty things, but of a few important cases,—of 'heavy business,' in short. I feel that I could get on well with it, and that it is just the thing suited to me. It would exercise my mind, and also secure me a handsome income, and, before long, an independence. What I should do *then*, I don't know." His wishes were amply gratified a few years afterwards, as the reader must have already seen. So rapidly, indeed, did the calls of private practice increase upon him, that he was forced, early in 1843, to resign his lectureship at the Law Institution, having, in fact, got fairly into the stream of his desired "first-rate pleading business" to an extent which heavily taxed both his physical and mental energies. Whatever was brought to him, he attended to thoroughly, never resting till he had completely exhausted the subject, and contemplated it from every point of view. Even at this time, however, it would be incredible to what an extent he obliged his friends at the bar, principally by preparing for them arguments, and sketching for them "opinions" on their cases, and these, too, generally of special difficulty and importance. Some of the most admirable arguments delivered by others of late, at the bar of the House of Lords, had been really prepared by Mr Smith. In one instance, indeed, I recollect hearing the ablest living lawyer and advocate mention, that in a particular cause of great magnitude, not having found it possible even to open his ponderous brief before he was called upon to argue, he had time, before he rose, barely to glance over a brief "epitome" of the facts, and of the *real* though unsuspected point in which the case ought to be decided, which had been prepared for his assistance by Mr Smith. In confident reliance upon his accuracy in matters both of fact and law, the counsel in question boldly opened the case, implicitly adopting and ably enforcing Mr Smith's view of it, and succeeded in

obtaining the judgment of the House. Mr Smith never spoke, however, of these his subsidiary labours to others, nor liked ever to have any allusion made to the subject.

It was impossible that he could get through all this business without sitting up during most of the night; and I know that, for the last three or four years of his life, he was rarely in bed before two, and sometimes three, and even four o'clock, having to be, nevertheless, at Westminster, or Guildhall, as early as ten o'clock, or half-past nine, on the ensuing morning. While thus arduously engaged, he kept a constant eye upon the progress of the decisions of the various courts, as bearing upon his "Mercantile Law," and "Leading Cases," interleaved copies of which always lay on his table before him, and received almost daily MS. additions. Thus it was that he was able in 1841 and 1843, to present new editions of his "Leading Cases" and "Mercantile Law," greatly enlarged and improved, and in many instances, especially in the "Leading Cases," entirely remodelled. Nor was he, with all this, so absorbed as to forget literature; for, amidst his piles of opened law-books, you might often see a well-used copy of some classic English, French, Spanish, or Italian author, either prose or poetry, which he would read with equal zest and attention, as his pencil-marks in such volumes attest. As for "Don Quixote" and "Gil Blas," I really think he knew them almost off by heart in the originals. He was also fond of Tacitus, Cicero, and Demosthenes, from all of whom, as well as the other leading classics, but especially the two latter, he could quote to a surprising extent, and with signal accuracy—a fact well known to all his friends. Of this, indeed, Mr Phillimore* has given a striking instance, in his sketch of Mr Smith in the "Law Magazine." After observing that "his memory was, indeed, astonishing, and the feats which he performed with it were incredible;

that the writer had heard him repeat, successively, scene after scene from a French vaudeville, the Record in an Action filling up the "&c.'s," and a passage from a Greek orator, without the least apparent difficulty or hesitation," Mr Phillimore proceeds to say, that the passage in question "was one of the finest in the Greek language, being in the speech of Æschines, which the most celebrated effort of the genius of Demosthenes was required to answer; when, after adjuring the Athenians not to raise a trophy to their own loss and shame, nor awaken in the minds of their confederates the recollection of their misfortunes, he proceeds—'ἀλλ' ἐπειδὴ τοῖς σώμασιν οὐ παρὲν ἔνισθαι, ἀλλὰ ταῖς γε διανοίαις ἀποβλεψάτ' αἰλῶν εἰς τὰς συμφορας,' &c., down to the words, 'ἐπισκῆπτοντας μηδὲν τρέψω τὸν τῆς ἐλλάδος αλιτῆριον στεφανοῦν,' the writer well remembering that Mr Smith insisted particularly on the extraordinary force and beauty of the word, 'ἐπισκῆπτοντας.'" I also, have often heard him quote long passages from the Greek dramatists, particularly from "Aristophanes," really *impromptu*, and with as much facility and vivacity as if he had been reciting English.

I have already intimated that he read many of the new publications of the day. One of these was Mr Macaulay's "Lays of Ancient Rome," with which he was much amused, saying that "some of them were very clever and spirited;" and, after reading them, he sat down one evening and wrote a humorous parody on them, which he showed me, entitled, "Lay of Gascoigne Justice," prefaced by an "Extract from a Manuscript of a Late Reporter," who says, "I had observed numerous traces, in the old reports and entries, of the use of *Rhythm* in the enunciation of legal doctrines; and, pursuing the investigation, I at length persuaded myself that, in the infancy of English law, the business of the court was transacted in *verse*, or, at least, *rhythm*, sometimes without, but on grand and solemn occasions with the aid of

* *Law Magazine*, N. S. Vol. lxx. p. 183.

music; a practice which seems to have been introduced by the ecclesiastical advocates." After a humorous argument in support of this notion, he concludes: "The following attempt to restore certain of these *Lays of Ancient Law* is conceived, as the original Lays themselves probably were, partly in bad English, partly in Dog-Latin." Then follows the "Lay of Gascoigne Justice, Chanted by Cooke and Coke, Sergeants, and Plowden, Apprentice in the Hall of Sergeants' Inn, A.D. 15—" The subject of the Lay was a certain highway exploit of Prince Harry, Poins, and Peto. Poins gets into trouble, being brought incontinently before Gascoigne Justice, "presiding at the Bailey." The concluding verses contain a just satire on certain gross defects in the administration of criminal justice, which have been only very recently remedied.

"When Poins he spied, ho, ho! he cried,
The caiff hither bring!
We'll have a quick deliverance
Betwixt him and the King:

And sooth he said, for justice sped
In those days at a rate
Which now 'twere vain to seek to gain,
In matters small or great.

* * * * *

For sundry wise precautions,
The sages of the law
Discreetly framed, whereby they aimed
To keep the rogues in awe.

For lest some sturdy criminal
False witnesses should bring—
*His witnesses were not allowed
To swear to anything.*

And lest his oily advocate
The court should overreach,
*His advocate was not allowed
The privilege of speech.*

Yet such was the humanity
And wisdom of the law!
That if in his indictment there
Appeared to be a flaw—

The court assigned him counsellors,
To argue on the doubt,
*Provided he himself had first
Contrived to point it out.*

Yet lest their mildness should perchance
Be craftily abused,
*To show him the indictment they
Most sturdily refused.*

But still that he might understand
The nature of the charge,
*The same was in the Latin tongue
Read out to him at large.*

'Twas thus the law kept rogues at awe,
Gave honest men protection,
And justly famed, by all was named,
Of 'wisdom the perfection!'

But now the case is different,
The rogues are getting bold—
It was not so, some time ago,
In those good days of old!"

It may be gathered from what has gone before, that Mr Smith's mind was one of equal *activity* and strength. His physical energies might flag, but never those of his mind. He was always ready to pass from protracted and intense professional study and exertion to other kinds of mental exercise—"from gay to grave, from lively to severe"—either reading general literature or amusing himself with slight affairs such as the foregoing; or, as soon as a little leisure had recruited his spirits, entering with infinite zest into superior conversation on almost any topic that could be started. He was for a long time shy and distant to strangers; but was quite a different person at the tables and in the company of his old friends and companions. There certainly never sate at *my* table a man who, when in the humour, could supply for hours together such genuine fun and amusement as Mr Smith. Our children were always glad to see him, for he was patient and gentle with them, and contrived really to entertain them. Towards ladies his manner was always most fastidiously delicate and courteous. There was, if I may so speak, a smack of days gone by—a kind of antique and rather quaint gracefulness of demeanour and address, which I used frequently to contemplate with lively interest and curiosity. When he returned from dining out to his chambers, he would light his candles, and, instead of going to bed, sit up till a very late hour; for not only had he much to get through, but was a bad sleeper. A few years before his death, he had become a member of the Garrick Club, which was ever after his favourite resort, and was also frequented by several other members of the bar. He delighted to take a friend or two to dinner with him, and would entertain them most hospitably, and

with increasing frequency, as his means became rapidly more ample. He was also fond of the theatres, taking special delight in comedies and farces, however broad, and even pantomimes. With what solemn drollery he would afterwards dwell on the feats of Clown and Pantaloon! I am here, however, speaking of several years ago; for latterly he said, "It was a hard thing to find anything to laugh at in a pantomime, however much one tried!"

During the years 1842, 1843, and 1844, his practice continued steadily increasing, and that, too, in the highest and most lucrative class of business—not only before special juries at Nisi Prius, and the Courts in Banc and in Error in the Exchequer Chamber, but in the Privy Council and the House of Lords. Before the last tribunal, in particular, he appeared as one of the counsel in the O'Connell case, on behalf of Mr O'Connell and his companions. His time was now incessantly occupied by day and night; his slight intervals of relaxation necessarily becoming fewer and fewer. His evenings, indeed, were almost always occupied with arbitrations, consultations, or preparing those pleadings and writing those opinions which his constant attendance in the courts prevented his *then* disposing of. His friends saw with pain how grievously he was overtasking his strength, and earnestly importuned him to give himself more intervals of relaxation—but in vain. For nearly two years before his death, his haggard countenance evidenced the direful havoc which he was making of a constitution never of the strongest. Sir William Follett and he were both sitting at the bar of the House of Lords, on one of the latest days of the hearing of Mr O'Connell's case, each within a yard or two of me. Two death-doomed beings they looked, each, alas! having similarly provoked and accelerated his fate. On the same afternoon that Sir William Follett had leaned heavily and feebly on my arm, as he with difficulty retired from the bar, I went home in a cab with Mr Smith, who sate by me silent and ex-

hausted, and coughing convulsively. I repeatedly conjured him to pause, and give his shattered health a chance of recovery, by retiring for a few months, or even for a year or two, from the excitement and wasting anxieties and exertions of business; but he never would listen to me nor to any of his friends. "It is all very well," he said to me several times, "to talk of retiring *for a while*; but what is to become of one's business and connection in the mean time? You know it will have melted away for ever." He had, however, been persuaded to consult a physician of experienced skill in cases of consumption; who, after having once or twice seen him, sent a private message to the friend who had prevailed on Mr Smith to call upon him; and on that friend's attending the physician, he pronounced the case to be utterly hopeless; that it might be a matter of months, even; but Mr Smith ought to be prepared for the worst, and apprised of his situation. His friend requested the physician to undertake that duty, assuring him of his patient's great strength of mind and character; but he declined.

Mr Smith spent the long vacation of 1844 with his brothers and sisters in Ireland. They were shocked at his appearance, and affectionately implored him not to return to England or attempt to resume his professional duties; but in vain. While staying in Ireland, he regretted the fast flight of time, evidently clinging to the society of his brothers and sisters, to the latter of whom he was most devotedly attached; but bleak, bitter November saw him again established at the Temple, and fairly over head and ears in the business of the commencing term! He attended the courts as usual; went out in the evenings to arbitrations and consultations as of old; dined also at the Garrick as before; and sat up as late at nights as ever. We all sighed at this deplorable infatuation; but what could we do? He was a man of inflexible will and a peculiar idiosyncrasy. Remonstrance and entreaty, from the first useless, at length evidently became

only irritating. Not a judge on the bench, nor a member of the bar, but regretted to see him persist in attending the courts; where he sat and stood, indeed, a piteous spectacle. He resolved on going the Spring Circuit in 1845, being retained in some of the heaviest cases tried there. Shortly before this, the friend already referred to resolved to perform the painful duty of telling him, that in his physician's opinion there was not a ray of hope for his recovery; a communication which he received with calmness and fortitude. To his brother's entreaties, about the month of June, that he would either go abroad, accompanied by one of his brothers or sisters, or allow the latter to come and live with him, in a house a little removed from town, he steadily turned a deaf ear. He evidently knew that it was useless; and spoke of his desperate state as calmly as he would have done in referring to the case of a mere stranger. It is believed that his sole reason for refusing to permit one of his sisters to come over, was his fond and tender regard for her—a reluctance to permit her to witness him waste away, injuring in vain her own health and spirits. About this time, he said to his brother quietly, but sadly, that "he feared his sisters would soon have to bear a severe shock!" He sat in his chambers, which were within only a few yards' distance from the Temple Church, on the day of Sir William Follett's funeral. He heard the tolling of the bell, and from his window* he could have seen much of that solemn ceremonial. What must have been his feelings? This was on the 4th July; and five days afterwards, (viz. on the 9th), poor Mr Smith appeared, I believe for the last time in the Court of Exchequer, during the post-terminal sittings in Trinity vacation, to argue a demurrer! I was present during part of the time. What a dismal object he looked while addressing the Court! We drove up to the Temple together. He had argued

the case of *Bradburne v. Botfield*, (reported in 14 Meeson and Welsby, 558), the last time that his name appears in the Reports. It was a nice question, as to whether certain covenants in a lease were joint or several: his argument was successful, and the Court gave judgment in his favour. The next day he said to me, speaking of this occasion. "The judges must have thought me talking great nonsense: I was so weak, that it was with great difficulty I could keep from dropping down, for my legs trembled under me all the time violently, and now and then I seemed to lose sight of the judges." Yet his argument was distinguished by his usual accuracy, clearness, and force of reasoning.

Nobody could prevail upon him to abstain from going the summer circuit. He went accordingly, and unless I am mistaken, held several heavy briefs. When the northern circuit had closed I joined my family at Hastings; and found that Mr Smith was staying at the Victoria Hotel, St Leonards. I called upon him immediately after my arrival. His appearance was truly afflicting to behold. Consumption had fixed her talons still deeper in his vitals. He sat in an easy chair, from which he could not rise without great effort; and he expressed himself as delighted that I, and another of his oldest friends, happened to have established ourselves so near him. He was quite alone—no friend or relative with him; several briefs, &c. lay on his table, together with the most recent numbers of the Reports, one or two law text-books, and works on general literature. A Bible also lay in the room, with several papers placed within the leaves. Nothing could exceed the attention paid to him by the landlady and her daughter, and the servants; but he gave them little trouble. His cough was much aggravated, as were the wasting night-sweats; and he could walk only a few steps without assistance. Soon after having got to Hastings, I was summoned away to attend a court-martial at Leeds, which kept me there for upwards of a fortnight. On my return, Mr Smith

* His chambers were No. 2 Mitre Court Buildings, to which he had removed from No 12 King's Bench Walk, about two years before.

expressed a lively anxiety to hear from me a detailed account of "how the military managed law." He seemed never tired of hearing of those "curious proceedings," as he styled them.

I spent nearly two hours a-day with him during the remainder of my stay, accompanying him in long drives whenever the weather permitted. Weak though his body was, his mind was as active and strong as ever. I saw several as heavy "sets" of papers, from time to time, forwarded by his clerk from London, according to Mr Smith's orders, as I had ever seen even in his chambers. When I implored him to send them back and take a real holiday, he answered simply, "No; they *must* be attended to,"—and he did so: though I saw him once unable from weakness to lift a brief from his knees to the table. I never beheld so calm and patient a sufferer. He never repined at the fate which had befallen him, nor uttered a word showing impatience or irritability. When we drove out together, he generally said little or nothing the whole time, lest his cough should be aggravated, but was anxious to be talked to. Once he suddenly asked me, when we were driving out, "Whether I really ever intended to permit him to see the sketch of Follett, which I was preparing." I parried the question by asking him, "Whether he thought Sir William Follett a great lawyer."—"Certainly," said he, "if there *be* such a character as a great lawyer. What thing of importance that only a great lawyer could do, did not Follett do? He *necessarily* knew an immensity of law; and his tact was a thing quite wonderful, but it required much knowledge and experience to appreciate it. I was a great admirer of Follett. . . . I once heard him say, by the way, that either he had applied for the place of a police magistrate, or would have accepted it, if it had been offered, soon after he had come to the bar; so that it is quite a mistake to suppose that he was all at once so successful. . . . And I can tell you another little fact about Follett: though perhaps no man

took so few notes on his brief, during a cause: this was not always so; for, when he first came to the bar, he took most full and elaborate notes of every case, and prepared his arguments with extreme care. I have seen proofs of this." Shortly before his leaving town he purchased a copy of "Thirlwall's (the Bishop of St David's) History of Greece," in eight volumes, "to read over at the sea-side;" and he did so: telling me that "he liked it much,—that it had told him many things which he had not known before." This copy his brother presented to me after Mr Smith's death, and I value it greatly. One morning I found him much exhausted; but soon after I had taken my seat he said, "You can oblige me by something, if you will do it for me. I recollect that there is generally lying on your table, at chambers, 'Bell's Principles of the Law of Scotland.' Now I am very anxious to read the book, as I expect to be in one, if not two, Scotch appeal cases, in the House of Lords, next session!—Will you do me this favour?" Of course I immediately procured the book to be forwarded to him, and it afforded him uncommon pleasure for many days. He read it entirely through with deep attention, as his numerous pencil-marks on the margin attest, as well as several notes on the fly-leaf, of leading points of difference between our law and that of Scotland. At page 35, § 76, the text runs thus:—"Tacit acceptance may be inferred from silence, when the refusal is so put as to require rejection, if the party do not mean to assent; as when a merchant writes to another, that he is against a certain day, to send him a certain commodity, at a certain price, unless he shall previously forbid." Opposite to this, Mr Smith has written in pencil, "*Surely one man cannot throw the duty of refusal on another, [in] that way?*" In the course of a little discussion which we had on this subject, I said, "Suppose the parties have had previously similar transactions?"—"Ah," he answered, "that might make a difference, and evidence a *contract* to the effect stated; but as nakedly enunciated

in the text, I think it cannot be the law of Scotland, or law anywhere." He made many interesting and valuable remarks from time to time on Scotch law, and expressed a high opinion of the work in question, referring to every portion of it as readily as though it had been his familiar textbook for years.

I often found him reading the numbers of the Queen's Bench, Common Pleas, and Exchequer Reports; and he once said, "I have a good many arrears to get through, in this way, before the beginning of term!" One day I saw a prodigious pile of law papers lying on his table, which had just arrived from London. "Why, what are these, my dear Smith?" said I earnestly—for he lay on the sofa in a state of miserable exhaustion. After some minutes' pause, he replied, "It is a very troublesome case. I have to reply or demur to some harassing pleas of ———."

"But why not postpone them till near the end of October?"

"When I am not fatigued, papers amuse me, and occupy my attention." I offered to him my services. "No, thank you—it would fatigue me more to explain the previous state of matters, with which I am familiar, than to draw the pleadings"—and he did it himself. On another occasion, I saw him sitting in his easy chair, deadly pale. When I had placed myself beside him, he said in a faint tone, but calmly and deliberately, "This morning a serious thing has happened to me," and he mentioned a new and alarming feature in his complaint, which, alas! fully justified his observation; and during the day he allowed me to request Dr Duke, who was attending a patient in the hotel, to see him. He did—and on quitting him, told me that of course the case was hopeless; that his friends should be sent for, and he would not answer for his life for a few weeks, or even days.

Two or three days afterwards, Dr Duke saw him again, and had left him only half-an-hour when I called. He was writing a letter to an old friend

(one of his executors), and his face wore an expression of peculiar solemnity. Laying down his pen, and leaning back in his chair, he gently shook my hand, and, in an affectionate manner, said, "Warren, I have just had a startling communication made me by Dr Duke; he has told me plainly that I cannot live much longer,—that recovery is utterly out of the question,—and that I am nearer death than I suppose." After a pause, I said, "He has been faithful, then, my dear Smith. It was his duty; and I trust he did it in a prudent manner."—"Perfectly," he replied. Profound gloom was in his features, but he was calm. Presently he said, covering his face with his attenuated hand, "I have none to thank but myself; I have killed myself by going the last circuit, but I could not resist some tempting briefs which awaited me! I now regret that I did not allow my sister to come over, months ago, and go with her to the south of France; but of course wishing, *now*, is useless." Again I entreated him to allow her to be sent for. "My dear Warren," said he decisively, "you and B. have often asked me to do so. I beg you to do so no more. I have private reasons for declining to follow your advice." His voice slightly faltered. His "private reasons" have already been adverted to—they were, his tender love for one whom he would not shock by showing himself to her in the rapid progress of decay! From that day I never saw the semblance of a smile upon his face, nor any appearance of emotion, but only of solemn thoughtfulness. A few days afterwards I said to him, "Well, if it be the will of God that you should never return to your profession, it is certainly consolatory for you to reflect how great a reputation you justly enjoy at the bar, and in how short a time you have gained it. Your name will live." He made no answer for some minutes, but shook his head, and then said, "I have done nothing worthy of being remembered for; but you are kind for saying so."

Even after this, the mail every now

and then brought him fresh "papers" from town; and Miss —, the daughter of the landlady, and who attended him with the utmost solicitude, one evening burst into tears, as she showed me a fresh packet; adding, "It is really heart-breaking to have to take them in to him: he is so weak that he feels a difficulty in even opening them!" It was so, indeed! The two old friends whom he had named as executors came down to St Leonards two or three times, and spent several days with him. As the time for my family's return to town approached he evidently regarded it with uneasiness, and almost daily said, "Must you *really* go by the 15th? And B. is also going before that: then I shall be left quite alone, and shall certainly feel dull." A friend of mine, a lady who resides near St Leonards, having requested me to introduce her to him, in order that when we were gone she might come and see him, I asked him if he would allow me to do so? "Indeed," said he faintly, and with a slight flush, "I should not only feel it a compliment, but extremely kind." The lady in question accordingly drove down kindly almost daily, bringing him grapes and flowers, which he said he felt to be a delicate attention: and so anxious was he to evince his sense of her courtesy, that he insisted on driving, when very feeble, on a bleak day, to leave a card at the lady's residence, nearly three miles off, with his own hand. When I took my leave of him, he seemed, I thought, a little moved; but said calmly, "If the weather breaks up, I shall return to the Temple: and it is possible that I may take lodgings in another part of the town; but to court I *must* go, at whatever inconvenience—for I have cases there which I must personally attend to!"

Towards the close of October he followed us to London, alone, and was sadly fatigued and exhausted by his journey. He went at once to his chambers; which he never, with one exception, quitted till his death; lying stretched in his dressing-gown upon

the sofa, a large table near him being covered with briefs, cases, and pleadings, which he attended to almost as regularly as if he had been in perfect health. Yet he found it difficult to sit up, his hand trembled when holding even a small book, and his cough was fearfully increased in frequency and violence, and he could get little or no sleep at nights. The reader may imagine the concern and astonishment with which I heard, that about a fortnight after his return he had actually gone to dine at the Garrick Club! sitting at his table there, as a friend who saw him told me, "more like a corpse than a living being; in short, I almost thought it must be his ghost!" He left his rooms, however, no more; having his dinner sent in, till within the last few days of his life, from a neighbouring tavern. He had several consultations held at his chambers, in cases where new trials were to be moved for; his leaders (one of whom was Mr Sergeant Talfourd), considerately waiving etiquette, and coming to their dying junior's chambers. They were, as may be supposed, most reluctant to transact business with one in his state, but he insisted upon it. He earnestly requested me not to mention at Westminster, or elsewhere, how ill I thought him; "for if you do, my clients will send me no business, and then I shall have nothing to amuse my mind with." Towards the end of the term he observed to me one morning,—"See how kind my clients are to me! I suspect they have heard that I cannot go to court, so they send me a great number of pleas, demurrers, and motion papers, which I have merely to sign, and get half-a-guinea: I think it so considerable!"

About the last day of the term, I happened myself to be his opponent, in one of those minor matters of form, a motion for "judgment as in case of a nonsuit," on account of my client's not having gone to trial at the preceding assizes. Mr Smith was lying in a state of great exhaustion on the sofa; but mentioned the "rule." I told him that I had brought my brief

with me,—“A peremptory undertaking, I suppose,” said he languidly, “to try at the next assizes?”—“Yes, and I will sign my own papers, and yours too, to save you the trouble,—or your clerk shall?”—“No, thank you,” said he, and with difficulty raised himself. “Will you oblige me by giving me a pen?” I did so, and with a trembling hand he wrote his name on the briefs, saying, in a melancholy tone as he wrote, “It is the last time I shall sign my name with yours. Even if you *perform* your undertaking, I shall not be at the trial!” About a week afterwards I found him finishing the last sheet of a huge mass of short-hand writer’s notes of an important case in which he was concerned, and he was grievously exhausted. It was in vain to remonstrate with him! An early and devoted friend of his, and I, called upon him daily two or three times, and sat with him as long as our engagements would permit us. We found his mind always vigorous; and though he could converse little, from weakness, and its irritating his cough, his language was as exact and significant as ever, and he liked to hear others talk, especially about what was going on at Westminster. I was sitting silently beside him one afternoon, only a fortnight before his death, when a friend came in, and, after we had sat some time together, asked me a question which had just arisen in his practice. “Don’t you think,” said he, “that, under these circumstances, we may read the word ‘*forthwith*,’ in this act of parliament, to mean, ‘as soon as reasonably may be?’” Our poor friend, who had not spoken before, and lay apparently asleep, instantly raised his head, and with some quickness observed, “Ah! if you could only read an act of parliament *in any way you liked*, what fine things you could do!”

The reader is not, however, to suppose that Mr Smith’s mind was exclusively occupied with business and legal topics. On the contrary, I am certain that he both read and thought much, and anxiously, on religious subjects. I saw the Bible constantly

open, and also one or two religious books; in particular, Mr Wilberforce’s “Practical Christianity” lay on his table and on his sofa. He seemed, however, to feel no disposition to *converse* on such topics, with any one. If any one attempted to lead conversation in that direction, he would either be silent, or in a significant manner change the subject. He had a favourite copy of Dante lying often near him, and it may be interesting to state, that he has left underscored in pencil, the two following verses in the third canto (*Del Purgatorio*), expressive of faith in the great mysteries of Christianity,—

“Matto è chi spera che nostra ragione,
Possa trascorrer la infinita via,
Che tiene una sustanzia in tre persone.

State contente, umana gente, al quia:
Che si potuto aveste veder tutto,
Mestier non era partorir Maria.”

It may not be necessary to say it, but he was a firm believer in the truths of Christianity, and a conscientious member of the Church of England. One day, within about a fortnight of his death, he said, “there is a work which I have often heard you speak of, and which, it does so happen, I never read, though I have often wished to do so; I mean Paley’s “*Horæ Paulinæ*.” I may say almost that I know his “*Evidences*” off by heart. Now, will you do me the favour of procuring me a copy of the other book, in as large type as you can, and as soon as you can, for,” he added with a slight sigh, after a pause, “I have not much time to lose?” I immediately procured him the book in question; and about three days afterwards he said to me, “I have read the ‘*Horæ Paulinæ*;’ it is a book of extraordinary merit; I very much wonder that I never read it before.” I asked him if he had read “*Butler’s Analogy*.” “Oh yes, of course, several times, and know it well,” he replied, rather quickly. Life was visibly ebbing fast away during the first week in December. He grew weaker and weaker almost hourly, and scarcely ever rose from his sofa, where he always lay in his dressing-gown, except to go

to his bedroom, which adjoined and opened into his sitting-room. He would allow no one to be in his chamber with him during the night! not even his attentive and attached laundress, or his clerk!* I once strongly urged upon him to allow the former to sleep in the chambers. "Either she leaves my chambers at her usual hour," said he peremptorily, "or I do." We felt it, however, impossible to allow this; and, without his being aware of it, his clerk and laundress by turns continued to spend the night in one of the adjoining rooms. It was well that such was the case, for he began to get delirious during the nights. About ten days before his death, a great and marked change came suddenly over him: his eyes assumed a strange glazed appearance, and his voice was altogether altered. His mind, however, continued calm and collected as ever. He moaned continually, though gently, assuring us, however, repeatedly that he felt no pain, "but an exhaustion that is quite inconceivable," he added faintly, "by you." Not many days before his end, he gave us a signal proof of the integrity of his reasoning faculties. Two of his friends, I and another, were sitting with him, and he told us, as he often latterly had, that he heard strange voices in the room. He asked the one who sat next him if there were not strangers at that moment in the room speaking? When assured that there were not, he said earnestly, "Will you, however, oblige me by looking immediately under the sofa, and tell me whether there is really no one there?" His friend looked, and solemnly assured him that there was no one there. "Now," said he, with some difficulty, after a pause, and suddenly looking at us, "how extraordinary this is! Of course, after what you say, I am bound to believe you, and the voices I hear are consequently imaginary: yet I hear them

uttering *articulate sounds*; they are human voices; they speak to me intelligibly. What can make that impression upon the organ of hearing—upon the tympanum? How is it done? There must be some strange disorder in the organs. I can't understand it, nor the state of my own faculties!" Then he relapsed into the state of drowsy, moaning, half-unconsciousness, in which he spent the last fortnight of his life.

For a few days previously, no more briefs or papers were taken in by the clerk: but one, a Case for an Opinion, which had been brought about a week before, Mr Smith immediately read over with a view of answering it. In consequence of a communication from the physician, we at once summoned Mr Smith's two brothers, the one from Dublin Castle, and the other (an officer on board the Devastation Steam Frigate) from Portsmouth. Both of them came as quickly as possible, and remained to the last in affectionate attendance upon their afflicted brother. About three days before his death he was asked if he wished to receive the sacrament. "Yes," he immediately replied, "I was about to ask for it, but feared I was too ill to go through with it. I request it may now be administered to me as soon as can be, for I am sensible that I have no time to lose; and *I beg that the rubric may be strictly complied with in all respects.*" This he said specially with reference to the prescribed number ("three, or two at the least") of communicants beside himself. The Rev. Mr Harding, father of one of his intimate friends,† being near at hand, immediately attended, and administered that sacred and awful rite: Lieutenant Smith, I, and another, partaking of the sacrament with our dying friend. He was in full possession of his faculties. He could not rise from the sofa, but made a great effort to incline towards the clergyman, lying with his hands clasped upon his breast. When the name of our Saviour was mentioned, he inclined his head with profound reverence

* I procured his clerk a similar situation with the late Mr Granger, M.P., my predecessor as Recorder of Hull, who died suddenly; and a day or two after the former had gone into a new employment, he was found dead in his bed.

† Sir John Dorney Harding, now the Queen's Advocate.

of manner. It was, indeed, a solemn and affecting scene, such as will never be effaced from my memory. When it was over, Mr Smith gently grasped the hand of Mr Harding, and faintly thanked him for his kindness in so promptly attending. He was unable that night to walk to his bed; to which he was assisted by his brother and a friend.

The dark curtain was now rapidly descending between him and this life. He never rose again from bed; but lay there in the same moaning yet comparatively tranquil state in which he had been during the week. On the morning of the day of his death, I went early to sit beside him, alone; gazing at his poor emaciated countenance, with inexpressible feelings. Shortly after I left, his oldest friend took my place; and, after a while, to his great surprise, Mr Smith, on recognising him, asked if a particular "case," — "*Ex parte* —" was not still in chambers? On being answered in the affirmative, he requested his friend to get pen, ink, and paper, and he would dictate the opinion! His friend, though conceiving him to be wandering and delirious, complied with his request; on which Mr Smith slightly elevated himself in bed, and, to the amazement of his friend, in a perfectly calm and collected manner, but with great difficulty of utterance, dictated not only an appropriate, but a correct and able opinion on a case of considerable difficulty! When he had concluded, with the words, "the case is practically remediless," he requested that what had been written might be read over. It was done, and he said, on its being concluded, "There is only one alteration necessary—strike out the words '*on the case*,' leaving it '*action*,' simpliciter;" thereby showing an exact appreciation of a point in the case, with reference to the suggested form of action, of much difficulty! After this effort he rallied no more, but lay in a dozing state all day; his friend, his brother, and myself by turns, sitting at his bedside. He appeared to suffer no pain. I sate with him till about six o'clock, gazing

at him with mournful intensity, perceiving that the dismal struggle was rapidly drawing to a close.

Being compelled to leave, I intended to have returned at eight o'clock; but, alas! a little before that hour, tidings were brought me that at shortly after seven o'clock our poor friend had been released from his sufferings. A few minutes before he expired, none being present but his brother and the laundress, he gently placed his left hand under his left cheek, and, after a few soft breathings, each longer than the preceding one, without apparent pain, ceased to exist upon earth. I immediately repaired to his chambers, and joined his brother and his oldest friend, who were sitting together in mournful silence. Around us were all the evidences of our departed friend's very recent occupancy. His spectacles lay on the table;—many briefs, some of which I had seen his own feeble hands open only a few days before, so remained, as well as various books; among which were two large interleaved copies of his "*Mercantile Law*" and "*Leading Cases*," with considerable MS. additions and corrections in his own handwriting. When I looked at all these, and reflected that the prematurely wasted remains of one of my earliest and most faithful friends lay, scarce yet cold, in the adjoining room, I own that I felt it difficult to suppress my emotions.

Quis desiderio sit pudor, aut modus
Tam cari capitis?

He died on the 17th December 1845. On looking among his papers, there was found a will which he had executed so long before as the year 1837, for a reason assigned in that document, viz., that on the 3d of July in that year, was passed the important Act of 7 Will. IV., and 1 Vict. c. 26, which rendered it necessary for all wills to be signed by the testator in the presence of two or more attesting witnesses, none having till then been necessary in the case of wills of personal estate, which alone Mr Smith left behind him. This document contains some characteristic touches. It begins in this old-fashioned and formal style:—

"In the name of God, Amen!

"I, John William Smith, of the Inner Temple, barrister-at-law, being minded to make my last will and testament before the act passed in the first year of the reign of Her present Majesty, (whom God long preserve), entitled 'An Act for the Amendment of the Law with respect to Wills,' shall have come into operation, do make this my last will and testament; that is to say," &c. &c.: and he proceeded, after giving some trifling mementoes to his friends, to bequeath all his property to his two executors, in trust for his sisters. He directed that his coffin should not be closed till after decay should have visibly commenced in his body: a precaution against the possibility of premature interment: which he always regarded with peculiar apprehension. He proceeded to direct that he should be buried in the burying-ground of the Temple church, a right which he always contended was possessed by every member of the Inn. With this request, however, it was impossible for the Benchers to comply, though anxious, by every means in their power, to do honour to his memory. He was therefore buried on the 24th December 1845, at Kensal Green. Had it been deemed desirable by his brothers and executors, a great number of the members of the bar would have attended his funeral. As it was, however, sixteen only of those most intimate with him followed his remains to their last resting-place. A small stone, placed at the head of his grave, merely mentions his name, age, and profession, and the day of his death; and adds, that a tablet to his memory is erected in the Temple church. On the ensuing Sunday, the Benchers of the Inner Temple caused the staff, or pole, surmounted with the arms of the Inn, carved in silver, and which is always borne before the Benchers into church, and placed at the corner of their pew, to be covered with crape, and the vergers to wear scarves; a tribute of respect which had never before then, I believe, been paid to any but deceased Benchers. They expressed

anxiety to pay every honour to the memory of so distinguished a member of the Inn, and cordially assented to the request that a tablet should be placed in the Triforium, where one of white marble now stands, bearing the following fitting inscription, written by his friend, Mr Phillimore.

JOH: GVL: SMITH

IN. STDIIS. HVMANITATIS. AC. LITTERARVM.
A. PVERITIA. SUMMA. LAVDE. VERSATO.
LEGVM. ET. CONSVETVDINIS. ANGLIÆ.
TYM. JVRIS. NEGOTIANTIVS. PROPRII.
PERITISSIMO. VT. SCRIPTA. QVÆ. MAGNAM.
ETIAM. TRANSMARINAS. APVD. GENTES.
AUCTORITATEM. CONSECVTA. SUNT. TESTANTVR.
MEMORIA. DILIGENTIA. ACVMINE. DOCTRINA.
NEGNON. FIDE. ET. BENEVOLENTIA. SINGVLARI.
A FORO. VBI. QVOAD. VIXIT. INGENIUM LAVDE.
CREVIT.
IMMATVRA. MORTE. ABREPTO.
H: L: S: E
NATVS. A.D. MDCCCIX. OBIT. IDIBVS. DEC. A.D.
MDCCCLV.

Thus died, and thus was honoured in his, alas! premature death, John William Smith: leaving behind him a name of unsullied purity, and a permanent reputation, among a body of men noted for their severe discrimination in estimating character. He practised his profession in the spirit of a GENTLEMAN, disdaining all those vulgar and degrading expedients now too often resorted to for the purpose of securing success at the bar. He waited, and prepared for, *his opportunity*, with modest patience and fortitude, and indomitable industry and energy. He possessed an intellect of uncommon power, consummately disciplined, and capable of easily mastering anything to which its energies were directed. Having devoted himself to jurisprudence, he obtained, as we have seen, a surprisingly rapid mastery, over its greatest difficulties, leaving behind him writings which have contributed equally to facilitate the study and the practice of the law, in an enlightened spirit. Had Providence been pleased to prolong his life, the voice of the profession would, within a very few years, have called for his elevation to

the judicial bench, and he would have proved one of its brightest ornaments. Nor did he sink the scholar in the lawyer, but cherished to the last those varied, elegant, refined, and refining tastes and pursuits, which, having acquired him early academical distinction, rendered in after-life his intercourse always delightful to the most accomplished and gifted of his friends and acquaintance, and supplied him with a never-failing source of intellectual recreation. Above all, his conduct was uniformly characterised by truth and honour, by generosity and munificence, hid from nearly all but the objects of it; and by a profound reverence for religion, and a sincere faith in that Christianity, the inestimable consolations of which he experienced in the trying time of sickness and death, and which could alone afford him a well-founded hope of eternal peace and happiness.

WHO IS THE MURDERER?*

A PROBLEM IN THE LAW OF CIRCUMSTANTIAL EVIDENCE.†

YORK, 15th March 1842.

A TRIAL for murder occurred here a few days ago, during the spring assizes for this county, which, taken altogether, is, in my opinion, the most remarkable that has been witnessed in this country for many years—little less so, indeed, than that of *Eugene Aram*; to which it bears, in several respects, a striking resemblance. The more I reflect upon it, the more am I struck with its peculiar interest and difficulty; and I consider it so calculated profitably to exercise the understandings of all clear-headed persons, lay or professional, interested in the administration of justice, (but peculiarly instructive to students of our criminal law),—and so illustrative of the working of that law under circumstances of extreme difficulty, that I have determined to devote my leisure evenings at this place to the task of giving a pretty full account of it. That there are in it circumstances of mystery and horror, is certain; but I shall reveal no more of them than is necessary for my purpose; for I scout the idea of “ministering to minds diseased” by that degrading appetite for the loathsome details of crime, which certain late publications have engendered in persons of inferior capacity and education. *They* will find little to interest them in this sketch; but I hope, and believe, that it will be otherwise with readers of a higher order—who may live under, or be acquainted with, other systems of criminal jurisprudence, (say in Scotland, and on the Continent, particularly in France and Germany), with which I shall enable

them to compare that of England—and to say how such a case as the present would have been dealt with by their own system. Who, indeed, here or elsewhere, can fail to be profoundly interested on behalf of JUSTICE in quest of a great criminal, and endeavouring, spite of a long lapse of time, to frustrate all his devices for secrecy and concealment; and in ascertaining that neither the innocent has been condemned, nor the guilty acquitted? I shall proceed to detail all the material facts of the case, with scrupulous accuracy, and so enable the reader to form a judgment on this case for himself, just as if he had sat beside me in court during the trial—observing the demeanour of the different witnesses and listening to their testimony—with his eyes, too, riveted—at moments of intense and thrilling interest—upon the features of the man standing at the bar, to answer the most dreadful charge on which man can be arraigned before man.

In the summer of the year 1830, there lived at a place called Eagle's-cliffe, near Yarm, in the North Riding of Yorkshire, a man of the name of William Huntley. He was one of the sons of a respectable farmer who had died about ten years before, leaving behind him a widow and several children, and considerable property to be divided between them; but his will was so imperfect and obscure as to have led to a Chancery suit, in order to determine the true distribution of the property according to his intention—which was, to leave his widow the

* *Blackwood's Magazine*, May 1842.

† *The Queen v. Goldsborough*.

interest of a certain sum for her life, and considerable legacies to each of his children, payable as they became of age. His son William was, in the year 1830, about thirty-four years of age, and married, but lived apart from his wife, with whom he had quarrelled. Owing to his being so long kept out of his little property, he became a weaver in order to support himself—and was, in fact, in humble circumstances. In point of personal appearance—a matter deserving particular attention—he was of middling stature; he had a broad squat face; his head was large behind; his forehead a retreating one, with rather a deep indentation between the eyebrows; and he was pitted with the smallpox. But there was one peculiarity in his face—a very prominent tooth on the left side of the under-jaw—which caught every one's eye on first looking at him. It occasioned him to have a sort of "twist of the mouth"—for which he had been always known and ridiculed by his companions, even at school. The solicitor who had the management of the affairs in Chancery was a Mr Garbutt, residing at Yarm, and still living. He had occasionally assisted the family, and, amongst them, William Huntley, by small advances during the time of their being kept out of their property.

At length, on *Thursday, 22d July 1830*—which will be a date found of great importance—Mr Garbutt was enabled to pay over to him the money due under the will; and on that day gave him a sum of £85, 16s. 4d.—the balance due after deducting the above-mentioned advances—in seventeen £5 bank-notes of the bank of Messrs Backhouse and Company, bankers at Stockton-upon-Tees, and the remainder in silver and copper. He was also entitled to receive other money, which Mr Garbutt had received instructions from him to endeavour to obtain; and I believe that he would have been entitled to a still further sum on his mother's death. As I have already mentioned, Huntley at this time resided at Eagle's-cliffe, but was in the constant habit of coming over to a small

village at a few miles' distance, called Hutton-Rudby, where his mother lived, and also an intimate friend of his, one Robert Goldsborough, (*the prisoner*), whose house, on such occasions, he was in the habit of making his own—always passing the night there. Goldsborough was about Huntley's age; was a widower, with a couple of children, and in destitute circumstances, having even been in the receipt of parish relief down to within a few months of the period at which this narrative commences. On the day of Huntley's receiving his money, viz. *Thursday, the 22d July*, he went over to Hutton-Rudby, and stayed there one or two days, principally in company with his friend Goldsborough. There is some reason to believe that Huntley was desirous of preventing two or three creditors of his from knowing that he had received so considerable a sum of money; and also that he had, about the time in question, intimated to one or two persons a wish to go to America. He appears to have gone frequently to and fro, between Hutton-Rudby and Eagle's-cliffe, during the ensuing week.

At an early hour, five o'clock, on the morning of *Friday, the 30th July*, he was seen coming to Goldsborough's house; again, about three o'clock in the afternoon of that day, walking on the highroad, in company with Goldsborough, and a man named Garbutt; a third time, at eight o'clock in the evening of the same day, sitting in Goldsborough's house; and about ten o'clock that night, he, Goldsborough, and Garbutt, were observed walking together in a cheerful and friendly manner—Goldsborough with a gun in his hand—all bending their steps towards Crathorne Wood, which was close by, apparently on a poaching errand. *From that moment to the present, Huntley has never been seen or heard of.* The circumstance of his disappearance was noticed as soon as six o'clock on the ensuing day, *Saturday*—and his continued absence rapidly increased the suspicion and alarm of the neighbourhood. A quan-

tity of stale-looking blood being seen on the side of the highroad, on the ensuing Monday morning, near the spot where he had been last seen walking with Goldsborough and Garbutt—and also a man's recollecting that, between eleven and twelve o'clock on Friday night, he had heard the report of a gun in Crathorne Wood, added to the circumstance of Huntley's having been seen so frequently in Goldsborough's company, down even to the moment of his sudden disappearance, naturally pointed suspicion at Goldsborough, and anxious inquiries were at once made of him by many persons, to know what had become of Huntley. To one person, a creditor of Huntley's, Goldsborough said, with an easy confident air, that he had set Huntley on the road to Whitby, where he was going to take ship for America. To Whitby instantly went several persons in quest of the missing man, but in vain; no such person had been seen or heard of in that direction, nor was there—nor had there been for some time—in that port any vessel bound for America. The disappointed inquirers returned to Goldsborough, to announce the fruitlessness of their search, when he gave another account of Huntley's movements; namely, that he had set Huntley on the way to Liverpool, there to take ship for America; and a short time afterwards, to another class of inquirers, he told an entirely different story, that he had set Huntley on his way to Bidsdale, to see some friends of his residing there. All this kindled still more vivid suspicion against him. Constables and others searched his house, and found in it a watch, and various articles of clothing, belonging to Huntley, but none of which he made the least attempt to conceal.

When asked to account for his possession of them, he gave inconsistent answers. First, he said that Huntley had given them to him; but, on being reminded how improbable it was that a man so covetous as Huntley should have done so, he said that the fact was that he had lent Huntley money, and, on his going off to America, he had

left the articles in question as a security for the repayment of what he owed. In short, Goldsborough was universally supposed to have murdered Huntley. On one occasion he said, without any embarrassment of manner, when taunted on the subject—"You'll all see, by-and-by, whether he's been murdered!" On another occasion, after following to his door a person who had just quitted it, he said to a man standing near—"That gentleman has been here asking after Huntley, but he'll find him neither at my house, nor at Whitby, nor nowhere else." Confident that the missing man had been murdered, the neighbours, and also the constables, searched far and wide after his body. To a party thus engaged, he once went up and said, impatiently—"You fools! it's no use searching there! Only you give up, and I'll bring Huntley to you in a fortnight!" From some cause or other, these efforts were shortly afterwards discontinued. About a week or ten days after Huntley's disappearance, Goldsborough was observed sitting opposite a large fire in his house, reading; and a strong smell was perceived as of woollen burning. "Dear me," said a person to him, "you've a large fire for summer time?" He said he could not sleep, so he was sitting up reading. To another person mentioning the smell of woollen burning, he replied—"That he had been burning only some old things which he had pulled from under the stairs." At times he appeared disconsolate, and agitated, and reserved. Again—he was found suddenly in possession of a considerable sum of money—in bank-notes, gold and silver—which he rather exhibited with some ostentation than concealed, and this as early as within a day or two after Huntley's disappearance: offering to lend money to some persons, and making various purchases for himself. He remained at his house till towards the close of the autumn, when, wearied with the perpetual suspicions and ill-feeling exhibited towards him, he removed to the town of Barnsley, about thirty or forty miles off, and hired a loom of a man, at whose house he took up his

abode. When asked what his name was, he replied, "*Touch me lightly!*" He brought with him a good stock of clothes—many of them Huntley's—two watches, and plenty of money, with which he was very liberal. He complained of being out of health, and did no work—his chief amusement being the going out to shoot small birds. Some weeks afterwards he went away, and returned in company with a woman, whom he said he had married—and that she had brought him a sum of £80 for her fortune. On being asked whence he had come, he replied, "from Darlington"—and passed under the name of Robert Towers.

This mysterious disappearance of Huntley, connected as it was with the circumstances above related with reference to Goldsborough, gradually ceased to be the subject of gossip and speculation.

But it may be asked—Why were not the startling facts of the case made the subject of a formal judicial inquiry? Let me ask another question, however—What proof was there that Huntley had been murdered at all, or that he was even dead? Was it impossible—or indeed very improbable—that Goldsborough's account of the matter might be the true one—viz. that Huntley had gone to America, and that Goldsborough was purposely giving contradictory accounts of Huntley's movements, to enable him to elude discovery? There was, in fact, no *corpus delicti*—the very first step failed. No lawyer, on the above facts only, would feel himself warranted in recommending the prosecution of Goldsborough for murder, with so serious a chance of an acquittal: in which case, he could never have been again tried as the murderer, however conclusive might be evidence subsequently discovered. "However strong and luminous may be the circumstances, the coincidence of which tends to indicate guilt," observes a distinguished writer on the law of evidence, Mr Starkie, "they avail nothing, unless the *corpus delicti*—the fact that the crime has been actually perpetrated—shall have been first established. So long as the least

doubt exists as to *the act*, there can be no certainty as to the criminal agent."

Thus, then, matters rested for a period of eleven years—that is, till the 21st June 1841—when a number of workmen were employed by a respectable farmer, a quaker, named Nellist, in making some alteration in the sides of a *stell*, i. e. a brook or rivulet, dividing a place called Stokesley from another called Seymour. While one of the labouring men, named Robinson, was engaged in cutting into one of the sides of the stell, at a spot where there was a curve or bend in the stream, called Stokesley Beck, and which was about five miles distant from the spot where Huntley, Garbutt, and Goldsborough had been last seen walking together, after turning up two cattle bones, he discovered one belonging to a human body—a shin bone; and presently, within a space of about a yard and a quarter, "the bones of a Christian," as he expressed it; in fact, a complete skeleton, with the exception of the feet. The head lay at a distance of a yard from the shin bone. Deeming this rather a curious circumstance, he took out the bones carefully, and laid them out at length on the side of the stell. They had lain at a depth of about three feet from the surface; and had evidently not been deposited there by digging a hole down from the surface, like a grave, but by hollowing out, or digging a hole in the stell-side, and then thrusting in the body, "back-side first, and doubled up," to use the words of the witness. The soil was tough and clayey; and the spot lay at a distance of about a hundred yards from the highroad. This stell was, in fact, not an inconsiderable stream, sometimes subject to overflows; and there was a wooden foot-bridge over it, a good way higher up the stream. The skull was removed from the earth carefully, by hand. It was filled with earth, and the lower back part of it appeared to have been broken off. The bones having been thus carefully laid out, on Robinson's master, Mr Nellist, arriving at the spot in the evening, he saw them with not a little surprise; and on looking at the skull and jaw-

bone, particularly noticed a *long projecting tooth on the left side of the lower jaw*. With the exception of two or three, all the teeth were in their sockets, and remained in them till the bones, which had been damp when first discovered, began to dry, when some of the teeth fell out, and, amongst others, the remarkable and all-important tooth in question. Before this had occurred, however, Mr Nellist took home with him, on the same evening, the skull and jaw-bone, and kept them, together with the loose teeth, in a pail. They were shortly afterwards, but before the prominent tooth in question had dropped out, seen by various persons; several of whom, on noticing the tooth, at once said that the skull was Huntley's, whom they had known. Mr Nellist committed the skull and teeth, a day or two afterwards, to the care of one Gernon, a constable, who put them into a basket; and having heard of the former suspicions against Goldsborough, whom he also ascertained to be then living under another name at Barnsley, set off of his own accord, carrying with him the bones, to take Goldsborough into custody.

On the evening of the 23d June, he found Goldsborough sitting in his house alone, without his coat, which hung over a chair back. "I have come," said the constable abruptly, "to take you into custody for the murder of William Huntley, eleven years ago,"—on which Goldsborough appeared dreadfully agitated. "Look at this," continued the officer, taking out the shattered skull, and showing it to Goldsborough, "and tell me if it isn't the remains of Huntley?" Goldsborough could not look at it, but his eyes wandered round the room: and with increasing trepidation, and bursting into tears, he exclaimed, "I am innocent! They may swear my life away if they please, but I never had any clothes, or a watch [the constable had asked him if he had not a watch belonging to Huntley], or anything belonging to Huntley! The last time I ever saw him was on Thursday!" The constable then took him into custody, but

released him the next morning, considering the evidence against him not sufficient to warrant his detention, especially as he had arrested Goldsborough on his own responsibility only. The whole matter was soon, however, brought under the notice of the magistrates, and steps were taken at once to obtain any evidence that might throw light on this long-hidden transaction:—a reward of one hundred pounds being offered, in the usual terms, to any one who should give such evidence as would lead to the discovery and conviction of the murderer of William Huntley. Shortly afterwards a man of the name of Thomas Groundy was heard making such observations as led to his being taken into custody, and on the 10th of August Goldsborough was again arrested—having continued ever since in the same house in which he had formerly been seized, at Barnsley—on the charge of having murdered William Huntley; Thomas Groundy being charged as an accessory after the fact. The magistrates having heard all the evidence which had been collected, were of opinion that it was expedient for the ends of justice to permit Groundy to turn king's evidence, as it is called—*i. e.* to be relieved from the charge against himself, in order to give evidence impeaching his fellow-prisoner. That was done; and the following is a *verbatim* copy of his deposition—every syllable of which is worthy of notice, in consequence of an extraordinary circumstance which occurred shortly after it had been taken:—

"Thomas Groundy being charged before us as an accessory after the fact to the murder by Robert Goldsborough of William Huntley, and being, after the hearing of all the evidence on the part of the prosecution, in the exercise of our discretion, admitted by us at this stage of the proceedings to give evidence against the said Robert Goldsborough, on his oath, saith—

"On the Wednesday after William Huntley was missing, Robert Goldsborough came to me, and asked me if I would help him with a bag to

Stokesley—he was going to America ; and I told him I would go, and we went by Neville's hind-house, and then we kept no road, and we went down to yon wood beside the stone bridge. He took me to a bag which was laid upon the ground in the wood, and I laid hold of it, and I found like a man's head, and I asked him what it was—and he stopped about five minutes before he spoke, and he then said—'It is a bad job, it is Huntley—as he was waiving (*qu. walking*) by me, I shot him.' Then I fell frightened, and wanted to go home, and Goldsborough said—'If you mention it I'll give you as much.' And I said I would not mention it, and I wanted to make off, and I made off. That the body was in the wood, within two or three hundred yards from the bridge. It is quite a lonely place. It was a rough place in the wood. Goldsborough never said anything more to me about it, and I was frightened, and durst not mention it to him. It was about hay-time. I knew William Huntley. He had a long tooth, and used to twist his mouth."—Sworn, &c., 14th August 1841.

"The mark of
"THOMAS + GROUNDY."

Two or three hours afterwards, Groundy hanged himself!—he had been placed in a room in York Castle, only to await the arrival of his sureties, who were to be bound with him for his appearance to give evidence at the trial, and had not been left above half an hour before he was found suspended by his neckerchief and braces to one of the iron bars of the window, his knees resting on the floor, and quite dead. He had been in good health and spirits, and perfectly sober, up to the last moment of his being seen alive ; having observed, in answer to inquiries, that what he had just been swearing to he had mentioned to two or three persons, whom he named, shortly after the facts had happened. An inquest was held on his body, and a verdict returned of *felo de se*.

To return,—Goldsborough, having heard the whole of the evidence thus

adduced against him, including, of course, that of Groundy, voluntarily made and signed the following statement, which also I shall present to you *verbatim* :

"On Thursday the 22d July 1830, William Huntley came to my house, and stopped and talked awhile, and asked me to take a walk with him. We took a walk down over the bridge, and through Sir William Foulis' plantation. We sat down on the side of the footpath, in the plantation ; and he says, 'I want you to look at some papers I have ;' and so he pulled them out of his inside coat-pocket, one a largish paper, which he had got from Mr Garbutt, and he says—'I have been drawing my money,' and said he had drawn £85, 16s., and he said, 'What is the reason of all this money kept back?' I looked at the paper, and told him what the sums were for. He said he did not want it mentioned to every person, for Dalkin, Robert Moon, and some others, who wanted money of him, would be at him. I told him I had nothing to do with it—I should say nothing about it—so we came home together, and he was backwards and forwards out of our house, and other houses in the town, all the day. He laid with me all night, as he generally used to do when he came to the town. He was backwards and forwards all the next day, and he hired a cart and brought a loom down from Robert Moon's and sold it to George Farnabay that day, and he stopped all night, again, and slept with me, and then he came to Stokesley on the Saturday, and tried me several times to go to America with him. I went with him to Stokesley. We were together awhile at Stokesley on that day, and then we parted, and I never saw him any more until the Thursday following, and he came down to me at Farnabay's shop, at Hutton, and called of me out, and pushed me sadly to go to America with him, and I told him I had two children, and I should not leave them, as I was both father and mother to them. So he stopped awhile, and he said if I would not go, he could not force me ; but if I would

go, I should share with him as long as he had a halfpenny. I refused, and he stopped on a while, and we went out, and I set him down a few yards from the door, and left him. We shook hands and parted; and he said, if Mr Garbutt did not put it out about his money, he would stop a few days longer, if people did not get to know about it. I have no more to say about it. That was the very last time I clapped my eyes upon him. If it was the last words I had to speak, I never was in Crathorne Woods, nor Weary Bank Woods, with Thomas Groundy. You may think it's a lie; but if it were the last words I had to speak, I never was with him.

"ROBERT GOLDSBOROUGH."

He was then committed to York Castle, to take his trial at the next spring assizes for Yorkshire—an occasion looked forward to with universal interest by the inhabitants of that great county. Accordingly, at nine o'clock on Wednesday morning, the 9th of March 1842, he made his appearance at the Bar of the Crown Court, before Baron Rolfe *—than whom a more firm, patient, acute, and clear-headed judge could not have been selected to try such a case—to meet the fearful charge now made against him, of the "wilful murder of William Huntley, by discharging at him a loaded gun, and thereby giving him a mortal wound, of which he instantly died."

"Put up Robert Goldsborough," said the clerk of arraigns to the governor of the castle, as soon as Mr Baron Rolfe had taken his seat; and in a few moments' time a man was led along to the Bar of the Court, whose appearance instantly excited in me a mixed feeling of pity and suspicion—the latter, however, predominating. He was forty-seven years of age, of average make and height, wearing an old but decent-looking drab great-coat, a printed cotton necker-

* I sent a note in Court one day to Baron Rolfe, now [1854] Lord Cranworth, Chancellor, asking him to read this paper. He wrote back, promising to do so, but added—"Who is the Murderer? Was there a Murder?"

chief, clean shirt-collar, and a pair of somewhat tarnished doeskin gloves. His hair and whiskers were of a dull sandy colour; his face rather long and thin; his eyes grey, heavy and slow in their movements, and with a sad expression; his upper lip long and heavy; his mouth compressed, with a certain indication of sullenness and determination. In short, his features were altogether of a rigid cast and a phlegmatic character, wearing an expression of great anxiety and depression. Whatever inward emotion he might be experiencing, he preserved an external composure of manner. On being placed at the Bar, he rested his arms on the iron bar, with his hands clasped together—never removing the gloves he wore. This was the attitude which he preserved, with scarce any variation, during the whole of his two days' trial. He pleaded "Not Guilty," with an air of modest firmness and sadness—eyeing each of his jurymen as they were sworn, and also the judge in his imposing ermine robes, and the counsel immediately beneath him, with anxious attention. He appeared to me a man of firm nerves, or rather perhaps of slow feeling, who had made up his mind to the worst. Was he not an object of profound interest? Had he really done the deed which now, after so many years' concealment, was to be dragged into the light of day? Had he shot dead the companion walking beside him in unsuspecting sociality, rifled the bleeding body, and then thrust it, in the dead of the night, into the earth?—or was he standing there as innocent of the crime imputed to him as the judge who was to try him, yet long blighted by unjust suspicion, and now despairing of a fair trial—the miserable victim of blind and cruel prejudice—to be convicted, within a few days hanged, his body buried within the precincts of the prison; and presently afterwards William Huntley to appear again alive and well?—

The counsel for the prosecution opened the case with candour and judgment, giving a clear account of the facts he expected to be able to es-

tablish; and in one of his observations the judge subsequently expressed his anxious concurrence, namely, the necessity there was for the jury to be on their guard against a certain air of romance which seemed shed over the case, and against a secret notion that the guilt of a long-hidden murder was *destined*, by some sort of special providence, to be brought home against the person now charged with it. I shall now proceed to give a carefully condensed account of all the material facts proved—the reader keeping his eye, all the while, on any points of coincidence or contradiction that may strike him; and I shall add such observations on the demeanour and character of the witnesses, as may possibly enable him the better to appreciate the value of their evidence. He is already supplied with a key to it, in the brief narrative which has gone before.

At the instance of the prisoner's counsel, all the witnesses were ordered out of court before the counsel for the crown opened the case for the prosecution. The following, then, was the evidence adduced to prove, first, that William Huntley *had been* murdered; and secondly, by Robert Goldsborough, the prisoner at the Bar.

William Garbutt, an attorney and solicitor, proved the facts stated, at the commencement of the narrative, as to the family, the property, and the person of William Huntley, particularly the prominent tooth; the payment to him of £85, 16s. 4d. on Thursday the 22d July 1830. He had examined the skull which had been found, and, from his recollection of the form of Huntley's countenance, believed it to have been his. He had never heard Huntley talk of going to America. A warrant had been issued against Garbutt in 1830, but unsuccessfully, as he had then absconded, and never since been heard of.

George Farnabay had known both Huntley and Goldsborough well. They were very intimate; and the last time he had seen them together was on *Thursday*, 29th July 1830. He saw Goldsborough enter his house (which

was in the same yard as the witness's house) about 3 P.M. the next day (*Friday*), with a sort of sack, but could not guess what it contained, nor whether it was light or heavy. On the next evening (*Sunday*), Goldsborough stood at his window, and pressed the witness to accompany him to Yarm fair the next morning, saying, that a man there owed him £5; which sum Goldsborough offered to lend to the witness. Goldsborough went to the fair, and bought a cow there, and put it into a field belonging to witness. A week afterwards I was at Goldsborough's, when Dalkin called to inquire after Huntley. Goldsborough said, Huntley had gone to Whitby to sail for America. The witness had himself heard Huntley speak, at different times, of going to America.

Robert Braithwaite saw Huntley come to Goldsborough's door, knock, and be admitted, about *five o'clock in the morning of Friday, 30th July 1830*. He had a particular tooth in his under jaw, which pushed his lips out. Witness had seen the skull and jaw-bone; and the tooth in it corresponded exactly with that of Huntley. Just before his disappearance, witness (a tailor) had made him a dark green coat with yellow 'roundish' buttons, raised in the middle; a 'yellowish' striped waistcoat with yellow buttons; and a pair of patent cord trousers, with a yellow sandy cast, and a 'broadish' rib; and he distinctly observed that Huntley wore those trousers when he called at Goldsborough's, at five o'clock on the Friday morning. Witness had known Goldsborough all his life. He was always very poor, and unable to pay witness for his clothes without the greatest difficulty.

James Gears was sitting smoking his pipe on the roadside (where he was engaged breaking stones), at Hutton-Rudby, *between three and four o'clock in the afternoon of Friday, 30th July 1830*. Huntley, Goldsborough, and Garbutt came up together, lit their pipes at that of the witness, and then went down the lane, northward, towards Middleton. That was the last time he ever saw Huntley. The witness

proceeded—"On *Wednesday, 4th August* 1830, Goldsborough and I were walking together towards some potato fields, and he pulled a quantity of silver out of his left-hand pocket, and four or five £5 bank-notes out of his right-hand pocket. I knew them by the stamp to be £5 notes. He told me they were Bank of England notes. I said, Robert, thou's well off—much better than I: I work hard for my family, and yet never have a penny to call my own." He said he had got the money out of the Stockton-on-Tees bank, where he could draw money whenever he wanted it, for he dealt in poultry. He had always till then been poor; having many times occasion to borrow a little meal and a little flour from the witness. The witness had mentioned the circumstance of the three men lighting their pipes from his, to Bewick the constable, on Monday the 2d August 1830. [If that were so, he must have then had his suspicions against Goldsborough; and it is rather odd that two days afterwards he should be walking so familiarly with Goldsborough, and should not have challenged him more strictly as to his suddenly acquired wealth. As singular is it, that Goldsborough, if guilty, should have so stupidly exhibited it to one who well knew his previous poverty; and that, too, at the time when everybody was beginning to suspect him as Huntley's murderer].

James Braithwaite—The last time he ever saw Huntley was about *eight o'clock in the evening of Friday 30th July* 1830, sitting on a box near the fireplace in Goldsborough's house. His face was full towards witness, who saw him quite plainly. On Monday, 2d August 1830, was Yarm fair-day; and on witness passing along the high-road, about nine o'clock in the evening, he observed a pool of blood about fifty yards from the bridge, which is a little below Foxton Bank on the road from Yarm to Rudby. He mentioned the circumstance the same day to Brigham the constable. About ten days afterwards, in passing Goldsborough's house about ten o'clock one

night, he observed a large fire, and went in, and told Goldsborough that there was a strong smell of woollen burning. He replied that he had been burning some old rags. The witness soon afterwards reminded him that it was bed-time, and said, "Aren't you going to bed?" He replied, "No; I can't sleep."

James Maw—[This man was by far the most important witness in the case. A violent attempt was made to impeach his credit; but, in my opinion, and in that of all whom I conversed with, quite unsuccessfully. He was about forty years old, very calm and collected—with a sort of quaint pedantry of manner, and gave his evidence in a fair, straightforward way]. The last time he had ever seen Huntley was *about nine o'clock on the night of Friday, 30th July* 1830, near the bridle-road leading to Crathorne Wood, in company with Goldsborough, who carried a new gun, and Garbutt—all three of whom the witness had long known well. Huntley wore a dark green coat, a yellow neckcloth, (which the witness particularly noticed), and darkish trousers and waistcoat. He spoke to witness, and said, "Where hast thou been, thou catty dog? [which was a common expression of Huntley's]. Wilt go along with us?"—"No," replied the witness: "you'll be getting into mischief with your poaching!" "*Do thou go with us,*" said Huntley; "we're going to try a new gun, and, if we catch a hare, we'll go to Crathorne, have it stewed, and get some ale." He then pulled out of his pockets some notes, showed them to the witness, and said, "I've plenty of money—I've been to Mr Garbutt's, and drawn part of my fortune." On this, Goldsborough said, "Put up thy money, thou fool; why art exposing it that way?" and then he added, (but the witness was not sure whether to Huntley or Garbutt), "We'll have nobody with us." They then went on through the gate on to Crathorne bridle-road, and the witness went home, which he reached about ten o'clock. [I shall give the remainder of his evidence in his own words]. "On *Saturday, 7th August,*

Bewick the constable and I went to the shop of Hall, a butcher at Hutton-Rudby, and there we had some talk about Huntley's being missing; and we and several others went that night to Goldsborough's house. Bewick said—'Goldy, there are strange reports about Huntley; what hast thou *really* done with him?' Goldsborough was very much agitated, making no answer for some time; then said he had set Huntley on the Whitby Road as far as Easley Bridge, to take ship for America. But I said *that* was very unlikely, for there had been no ship advertised to go to America. Shortly afterwards, he said he had set Huntley on the Tontine Road, to take coach for Liverpool—which was in the opposite direction to Whitby. I asked if Huntley had booked at the Tontine? Goldsborough said no, he had got on the coach beyond the Tontine. On this we all told him these were two opposite tales. I forget what his answer was, but he seemed very much agitated—so much so, that he quite shook, and required to use both his hands to put his hat on. Bewick and I at another time went to call on him, and found him walking up and down before some houses near his own. Bewick said, 'Now, really tell us, what hast thou done with Huntley?' He answered and said—[that was the formal style in which much of the witness's evidence was given]—'I sent him up Carlton Bank, to go into Bilsdale, to see some friends of his.' We said that was again another different story; but I forgot his answer. The same evening, I and four other men (some of them constables), who all died of the cholera when it was here, went to Goldsborough's house to search it—he not objecting to it. We found a pair of woollen corded trousers, an old waistcoat, and an old coat. I could almost have sworn they were all Huntley's. We also found six new shirts, marked 'W. H. 1,' 'W. H. 2,' 'W. H. 3,' 'W. H. 4,' 'W. H. 5,' 'W. H. 6,' in an old-fashioned piece of furniture, like a box or press, upstairs; not in the room where one Hannah Best was engaged washing.

The shirts had been made by one Hannah Butterwick; she was then there, and is now living, but I know not where. We asked Goldsborough how he explained all these things; and he said that Huntley had given the things to him. We said, 'No, no; he's too greedy a man for that;' on which Goldsborough said he had lent Huntley money, and he had left these things in part payment. There was a watch, seemingly of silver, with 'W. H.' engraved on the back, hanging up over the fireplace. We took it down, and examined it. There were two papers inside, one with the name of 'Mr Needham,' the other 'Mr Stephenson, watch and clock maker, Stokesley.' Goldsborough gave the same account of the watch as he had given of the clothes and shirts. There was a gun up the stairs, like the one I had observed in his hand when I last saw him with Huntley: it was new-looking. His sister-in-law pointed to it, crying, and saying, 'Oh, Robert, this is the thing thou'st either killed or hurt Huntley with.' He replied, 'Hold thy tongue, thou fool!' and was much agitated. I afterwards made one of those who went to search for Huntley's body. About fifty yards from that part of the road where the blood was found, near Foxton Bridge, I recollect seeing a place, in a potato ground, where the earth seemed to have been *newly dug*. [It certainly seems unaccountable that, if this circumstance really had been observed at that time, a spot so challenging suspicion should not have been instantly examined]. After we had been searching some time, we met Goldsborough, who said, 'Where have you been searching to-day?' Several persons replied, 'In Foxton Beck, Foxton Woods, and Middleton, and Crathorne Woods.' Goldsborough answered, 'He's far more likely to be found in Stokesley Beck.'" [The very place where the skeleton was found; but the obvious question arises—Could the prisoner have been insane enough thus to indicate the spot where he had deposited the body of his victim?] The witness then described Huntley's face, particularly his projecting tooth; and said

he had seen the skull and jaw-bone, with the projecting tooth in it, just in the same place as Huntley's was, and projecting in the same way.

John Sanderson lived in a house 200 yards from Crathorne Wood, and well recollected hearing, about eleven or twelve o'clock on the night of Friday, 30th July 1830 (the Friday before Yarm fair), a shot fired in the wood; and a second within about a minute afterwards. It seemed about a quarter of a mile off. He got up and listened; but heard nothing more. There was game in the wood, and there were sometimes poachers.

Bartholomew Goldsborough.—On going on Monday morning, 2d August 1830, to Yarm fair, saw a pool of stale-looking blood, about one and a half feet in diameter, lying on the high-road (which was not much frequented), a little on the Crathorne side of the road, and in a slanting direction towards the gate leading into Crathorne Wood. He had noticed this blood before he had heard that Huntley was missing. The place where the blood lay was from four to six miles' distance from Stokesley Beck, where the skeleton was found.

Thomas Richardson had sold Goldsborough a single-barrelled gun, on Monday, 26th July 1830, for 8s. It was an old one, but cleaned and polished up so as to look like a new one. He did not pay for it, saying, he would take it on trial. A day or two after Yarm fair (which was on Monday, 2d August 1830), the witness called on him for payment. Goldsborough said he would return it—he did not want it, and had not used it. The witness thrust his finger down the muzzle, and when he drew it out it was dirty with the mark of powder. The witness showed him the finger, and told him he had used the gun; which the witness then took away. When the witness entered Goldsborough's house, the latter was engaged at a chest, in which were some clothes; he particularly recollected seeing a pair of woollen cord trousers, broad striped, and a yellow cast with them; a yellow waistcoat with a dark stripe with gilt but-

tons. There were other clothes of a dark colour. The trousers and waistcoat were Huntley's—for the witness had seen him wear them. He had also seen Huntley wearing a green coat with brass buttons, having a nob on them. [This witness gave his evidence in a satisfactory manner; and admitted, on cross-examination, having been once or twice, some time before, imprisoned for poaching, and once for having stolen some goslings; of which, however, he strenuously declared that he had not been guilty. Mr Baron Rolfe, in summing up, seemed justly to attach no weight to these circumstances as impeaching the value of his evidence].

Joseph Dalkin.—Heard on Sunday, 1st August 1830, of Huntley's disappearance, and went on that day to Goldsborough's, to inquire after him. Goldsborough said he had set Huntley along Stokesley Lane—that he was going to sail for America from Whitby, at four o'clock on the next morning, (Monday). Witness said he would go and stop him, for he owed witness £4 for a suit of clothes. Goldsborough said, "Huntley and I have had all that matter talked over about his owing thee money; he never intends paying thee—and it's of no use thy going after him." The witness, however, did go immediately to Whitby, (a distance of thirty miles), and searched the whole town for Huntley, but in vain: nor was there any vessel going to America. When the witness measured Huntley, he wore a pair of patent cord trousers, with broad rib, and yellowish cast. He had pressed Huntley several times, in vain, to pay his bill.

George Bewick, a linen manufacturer, and also, in 1830, a constable. He had known Huntley, and recollected his disappearance. In consequence of hearing of it, he went soon after to Hall's (the butcher's) shop, where were Goldsborough and several others; but he did not then recollect whether the witness Maw was also there. Huntley's wife also accompanied witness, and he said to Goldsborough, "There's a report that Huntley is missing; and, as I hear you were last with him, I

thought you the likeliest person to ask about him." He replied, "that Huntley had some relations at Bilsdale, and had gone there to see them." "Why then," asked the witness, "did you tell Joe Dalkin he had gone to Whitby, and thereby give him a sixty miles' journey for nought?" He made some unsatisfactory answer; but what it was the witness did not recollect. He was agitated, and trembled. The witness then said to him, "I understand thou hast Huntley's five shirts: how did'st thou come by them?" He answered that he had bought them of Huntley: to which the witness replied, "I understand you and Huntley bought a web from George Farnabay between you, which made you five shirts each; and it was not likely that either you could buy or he would sell you his five shirts; and here's his wife says he was badly off for shirts—having only a bad one on, and a worse one off?" His answer to this the witness had forgotten. He proceeded to give the same description of Huntley's person which had been given by the other witnesses: adding, "Huntley had something more remarkable about his appearance than most men;" and that he had seen and examined the skull and jaw-bone, and believed it to be Huntley's. [This was an important witness; of respectable character and appearance; and corroborating the evidence of Maw in several material particulars. No attempt even was made to shake him by cross-examination].

Maria Richardson had lived at Hutton-Rudby when Huntley was missed. He wore at that time woollen cord trousers, with a broad rib, and yellow cast; and had a yellow waistcoat with a dark-coloured stripe in it. These articles of clothes, which witness knew at the time to be Huntley's, together with others, she saw in Goldsborough's house, in a sort of old-fashioned chest or press, about a week or fortnight after Huntley was missing. When she went in Goldsborough was at the chest looking over the clothes, and did not seem agitated. She was confident about having seen the articles in question.

John Kaye was sitting on the step of the house next door to Goldsborough's, on Sunday, 1st August 1830, and saw the witness Dalkin go to Goldsborough's house, and then come back. Goldsborough followed him out, and then remained standing close to the witness, and said, "That gentleman's been to my house, asking for Huntley; but I've told him he'll find him neither at my house, nor at Whitby, nor anywhere else!" The witness saw Goldsborough the next day, (Monday, 2d August 1830), driving home a red cow from Yarm fair.

Elizabeth Shaw.—On *Friday night*, 30th July 1830, (not having then, nor till a week afterwards, heard of Huntley's disappearance), between 12 and 1 o'clock, was at Mr Bainbridge's house, which was just opposite to Goldsborough's. She had brought some linen home from the wash-house. While there she observed Goldsborough go out of his yard; then he went up to the public-house of Catchasides, (also a constable), and first listened at the door, then at the low window, and then looked up towards the upper window, after which he returned towards his own house. When, about a week afterwards, the witness had heard that Huntley was missing, she went to Goldsborough's house, and found him sitting by a large fire, reading. "Dear me," said the witness to him, "this is a large fire for summer!" He said he had been burning some old rubbish, from under the stairs. There was a strong smell of woollen burning; and while the witness was talking in this way to him, he got up, opened the back window, and stood leaning for some time against it, saying, "I'm only looking out to get a bit of fresh air." Two or three days afterwards, she again saw Goldsborough at his house, and said, "What a sad thing it was if Huntley was murdered!" But all he said was, "You'll all see by-and-by whether he's murdered or not!" About that time he appeared greatly troubled in his mind, and not inclined to speak to any one. Goldsborough was a poor man, scarcely able to get a meal of meat, and, in

particular, was badly dressed. She believed she had heard Goldsborough, and possibly Huntley, talk of going to America; and thought she had heard Goldsborough say that Huntley had gone to America, and had "rued" it. [This witness gave her evidence in a plain, straightforward manner, admitting that she had had two children before marriage, and had been once in jail for an assault, and once for stealing geese—the truth of which charge she vehemently denied. She did not vary at all in her evidence, under cross-examination].

Hannah Best, (mother of the last two female witnesses), used to wash for Goldsborough once a-week; and when at his house on such occasions, used to put one of his two children to bed. The last time she had washed for him was on Friday, 30th July 1830; and on that occasion he said he would himself put his child to bed, but gave no reason for so doing. During the afternoon of that day, she observed him bring in something in a sack on his back, and take it up-stairs. She could not recollect ever having seen any shirts in Goldsborough's house that were marked, and must have recollected them if there had been such; nor did she recollect seeing Goldsborough looking into a chest, nor with any such clothes as had been described; nor did she recollect seeing the witness Maw in the house. [This was a stupid old woman of the *non miricordo* class; either really recollecting nothing of what had happened, or resolved to say nothing prejudicial to Goldsborough].

Anthony Wiles, till within the last seven years, had lived next door to his step-sister, who kept a chandler's shop at Hutton-Rudby; and where he had often seen Huntley go in to change his money into half-crown pieces, for which he always seemed to have a peculiar fancy. Witness knew Goldsborough well; and recollected the time of Yarm fair, on Monday, 2d August 1830. On the Saturday before (31st July) recollected seeing Goldsborough, *Thomas Groundy*, and two others, in a public-house drink-

ing, in the front kitchen; they came in about twelve o'clock at night, and remained there till four o'clock in the morning. They had at least thirteen pints of ale; and Goldsborough paid for all—giving half-crowns, and getting change for them every second or third pint. The witness was one of those who had searched for Huntley's body on the Friday or Saturday after he was missing. After having been home to get some refreshment, they returned to their task; and while at a hay-stack, which was about two miles from the place where the bones were found, Goldsborough came up, anxious and breathless, and said, "What are you doing there?—a lot of fools! If you'll only wait, I'll bring him forward in a fortnight!"

John Duck was overseer, in 1830, of the parish where Goldsborough then lived; and gave him and his family parish relief in the fore part of that year—viz. five shillings a-week for four weeks.

Robert Hall, a butcher at Hutton-Rudby, saw Goldsborough at Yarm fair on Monday 2d August 1830, buying a red heifer, for which witness saw him pay £7; and observed that he had paper money, gold, and silver. Recollected also Bewick, accompanied by Mrs Huntley, coming to his shop shortly after Huntley was missing, to inquire of Goldsborough, who was there also, what had become of Huntley.

William Robinson, a weaver at Barnsley.—In the autumn of 1830—towards Martinmas—Goldsborough came to reside with the witness; he took a loom of witness, and called himself "Robert:" when asked his other name, he used to say, "*Touch me lightly!*" He complained, at first, of being poorly, and did not work for some weeks, but would go out with a gun to shoot small birds. When he first came, he had on a pair of broadish woollen fawn-coloured trousers, and had also a black coat. His box did not arrive till some weeks afterwards; and then he had a green and black plaided coat, a top-coat, two hats, and two watches—one apparently an old, the other a new one, and made of silver. Both had

cases when he *first* came, but he subsequently lost the case of the old one. Witness never *saw* him with money; but, from his style of living, he must have had it. Once, on witness talking about buying a pig, Goldsborough told him not to be "fast" for want of a pound or two, and lent him two sovereigns. After living with witness a few weeks, he went away—northward, as he said—and, after a month's absence, returned with a woman, whom he said he had married. They only took their meals with the witness; sleeping elsewhere. They lived much better than witness and his family could afford to live.

William White.—In the spring of 1831, Goldsborough came to live near witness's mother, at Barnsley, under the name of Robert Towers. He used to have witness to go out with him shooting, to gather his birds—and the first time he paid witness anything, was a shilling, which he took out of a quantity of gold and silver—there must have been as much as £15 or £16, and 30s. worth of silver, or thereabouts. He had a watch, with a scarlet ribbon and two large seals, which he wore—and another with no outer case. He once offered to sell witness the watch he wore; and on his declining, asked him if he would buy the inside of another, which also the witness declined. At this time, he had been about four or five months at Barnsley. Once the witness asked him where he had come from; and he replied, Darlington. Soon after he came he bought a chest of drawers, a corner cupboard, and some chairs. He said he had got £80 from his wife's friends.

Three witnesses were then produced, to speak to the peculiarities of Huntley's personal appearance, and the correspondence of the skull which had been found with the form of his face and head. *One* was a respectable farmer, who had known him for fourteen years, and said, that he had a low nose and forehead, and his head was largish behind. The witness had seen and examined the skull—"It was," he said, "similar to Huntley's head, his face, and everything about

it." A *second* witness was a hatter at Hutton-Rudby, whose customer Huntley had been. He required a large hat; and on the last occasion, the witness had found it difficult to fit him. He had a particular shaped face, a short one, a broad flat nose, and was much sunk between the eyebrows. The low part of his forehead overhung much, and then fell back; and the hinder part of his head was very large. The *third* witness had known Huntley when a boy, and used, with the other boys, to plague him about his tooth.

Then was adduced the evidence of the discovery of the bones, and the locality where they were found, of which I have already given some account. The "stell" in question seemed to be a sort of tributary stream to the river Leven, two or three yards deep, though not broad, and was occasionally subject to floods, when its water would run rapidly down, past the spot where the bones were found, which was in a sort of small bend or curve of the stream, where the current had in a manner undermined the bank, which it left considerably overhanging. As I understood it, this hollowed part must have been still further excavated, for the purpose of receiving the body, which was supposed to have been thrust in "backside foremost," leaving the skull at one angle, and the feet at the opposite one of the base of the triangle. The soil was, I believe, alluvial. The spot in question was a secluded one, being the property of a Colonel —, who had once or twice been seen fishing in it. There was a foot-bridge, but at a considerable distance, higher up the stream. The whole of a human skeleton was found except the feet, the small bones of which might have been exposed to the action of the current, and from time to time washed away. All the bones, and particularly the skull, were removed most carefully by the hand, so that no injury might be inflicted by spade or pick-axe. When first discovered, it would appear certain that there was a very prominent tooth on the left side of the lower jaw, which arrested the attention of all those who

saw it; but soon afterwards, owing to the inconceivable carelessness and stupidity of those intrusted with the custody of such all-important articles, and who permitted every idle visitor to have free access to them, the tooth in question—alas!—was lost! I confess I have seldom experienced such a rising of indignation as when this remarkable deficiency of evidence was thus disgracefully accounted for; and had I been the judge, the very least symptom of my displeasure would have been the disallowance of the costs of any witness in whose custody the bones had been placed when the tooth in question was with them.

To return, however—it was now nearly five o'clock in the afternoon, and as the case for the crown must inevitably close shortly, it was properly determined upon to produce the bones during the broad daylight, to enable the jury, judge, and the witnesses, to see them distinctly. As soon as I heard a whispered suggestion to that effect, I fixed my eyes closely on the prisoner. As soon as he heard the order given to produce the bones, I perceived that he slightly changed colour; and turning his head a little towards the witness-box, where he expected them to be produced, he directed quick furtive glances, while a new square deal box was brought forward, and unlocked. To the eye of a close observer, the prisoner's countenance now evidenced the miserable and almost overpowering agitation he was experiencing—and that, withal, he was nerving himself up, so to speak, for a great effort. I perceived his breast twice or thrice heave heavily; and, though conscious of being watched closely by those around him, he could not keep his eyes for more than a moment away from the box, with whose mysterious contents he was to be so quickly confronted. At length a dark brown skull, the hinder part appearing to have been broken off, was lifted out of the box; the prisoner's under-lip drooped a little, and perceptibly quivered for a moment or two—and after one or two glances at the skull, he looked in another direction, his eyes,

if I know anything of human expression, full of suppressed agony and terror. Yet again—and again—he glanced at the dumb but fearful witness produced against him; and from a certain tremulous motion of the ends of his neckerchief, I could perceive that his heart was beating violently. Still he never moved from the position which he had occupied since the morning; though I learnt from one of the turnkeys who stood near him in the dock, that at the period I am mentioning, and also at several other periods of the day, he trembled so violently, and his knees seemed so near giving way, that they almost thought he would have fallen.

In these observations concerning the prisoner's demeanour, I am happy to find myself corroborated by a very able and learned friend, himself a close observer, who was leading counsel for the prosecution,* and made a point of watching the prisoner at the moment which I also had selected for so doing. He tells me that he had also observed another little circumstance—that the prisoner listened with comparative unconcern to those portions of the evidence relating to the blood found on the road, the sound of the gun-shot heard in the wood, his possession of the clothes of Huntley, and his conflicting accounts concerning them, and the movements of Huntley; but whenever there was any allusion to the disposal of the body, the carrying of it, and depositing it at Stokesley Beck, he became evidently painfully absorbed by what was said—agitated and apprehensive—always, however, striving to conceal his emotion. For what reason I know not, but no other portions of the skeleton were produced in court than the skull, the jaw-bone, the teeth, and a portion of the pelvis. I examined them all carefully. They were of a dark brown colour, with no appearance of decay—on the contrary, they seemed strong and compact. Most of the teeth were so loose as to fall out of the sockets, unless held in them while the jaw-bone and skull were being examined. None

* Mr Bliss, Q. C.

of the teeth were decayed, but such as might have been expected in a healthy adult, who had at all events never had diseased teeth. I examined minutely the socket which had contained, when the bones were first discovered, the prominent tooth—the first molar tooth on the left side of the lower jaw—subsequently so strangely lost. There was little *apparent* difference between it and its corresponding socket on the other side of the lower jaw; than which, however, it was a trifle deeper, and the outside edge projected a little, and only a little, more outwards. But even had they both been precisely similar, I conceive it yet quite possible that the tooth might, in life, have been a larger one than usual above the gum, and inclining a little outwards so as to cause a perceptible protrusion of the under-lip. As far as my own impression goes, I should certainly have felt great difficulty in pronouncing, from the mere appearance of the socket, that the tooth which it had contained must have been such a prominent and projecting one, as to give the living individual a remarkable peculiarity of countenance. Still, however, it must be borne in mind that a very prominent tooth *that socket actually did contain* when first removed from the earth, unless all the witnesses who said that they had observed it, Mr Strother the surgeon included, are perjured, or labouring under an inconceivable delusion on the subject.

The skull was dark, and of compact texture; but the first thing that struck one was, that a great portion—nearly two-thirds—of the lower hinder part was wanting, and seemed to have been broken off. It had no appearance of having decayed or mouldered away, but of having been fractured,—broken off; but whether before or after death, I cannot venture to offer an opinion. The edge was rough and abrupt—I mean not smooth and uniform, but strong and well-defined. In short, the missing part *must* have been broken off. I observed no traces whatever of shot-marks in any part of the skull or jaw. If one may be allowed to speculate in such a matter, I should say that,

if a loaded gun or pistol had been discharged during lifetime at the person to whom that skull had belonged, say with the muzzle pointed at or near either ear, in a direction parallel, or nearly so, with the other; or if, even, it had been discharged from behind, but in a somewhat upward direction; or if the person had been felled by a heavy blow from behind, and blows subsequently repeated till death ensued; or if, having been in the first instance shot, the back of the head had been battered in by blows from any heavy instrument, whether before or after death;—in any of these cases, I should have expected the skull, after lying ten or twelve years in the ground, without having ever been in any coffin, to present the appearance exhibited by the skull in question, while I was handling and examining it in court. But I could by no means say that such an appearance could not also have been occasioned by any violent injury suffered by the skull five, eight, ten, or twelve years after death. It will be observed that the skull in question was found in a tough clayey soil, near a stream, where it may have lain for twelve years or more, without probably having ever been touched or disturbed since first deposited there; and, when first discovered, was carefully removed by the hand only of him who first saw it. What inference is to be drawn from the fact that the skull was found full of earth, but not the sockets of the eyes, nor the mouth, I know not. As to judging, from the mere skull, of the general form of the *countenance* during life, it is obviously a matter of infinite difficulty. Who, for instance, can tell whether the party's face was a fat or a lean one? All I can say is, that having heard the same account given by so many of the witnesses of Huntley's face and head, and without regarding their further statement that the skull, in their opinion, had belonged to him, I thought it probable that such was the fact. The skull was large, particularly towards the back part; the forehead narrow, and rather retreating; there was some sinking between the eyebrows; and from the bones of

the nose, I should think it must have been a flat spreading nose. The only professional witness called, was a respectable surgeon who lived in the neighbourhood where the bones were found. He swore that when he first saw the jaw-bone, a day or two after it had been discovered, it contained the remarkable projecting tooth in question; and from the form of the skull, and of the pelvis, he was confident that they had been those of an adult male. He also said, that from the form of the socket, it must have contained such a tooth as would have given Huntley the appearance described by the witnesses. "It is," said he, holding the skull and jaw-bone together in his hand, "the skull of a person who had a short round face, a low forehead sloping back, a broad flat nose, and a depression at the top of it. The bones," he continued, "appeared to have been in the ground nine or ten years: they *might* have lain there as long even as twenty years; and though certainly much would depend, with reference to such a point, upon the nature of the soil where they had lain, he had not made any chemical examination of it. From the broken appearance of the skull, he pronounced a confident opinion that the person to whom it had belonged 'had died a violent death.'" In answer to a pointed question from the judge, the witness repeated that the tooth in question, when he saw it in the jaw, projected a good deal more than such a tooth generally did. So much for the bones.

Then was offered in evidence the deposition of Thomas Groundy, (*ante*, p. 194), and the prisoner's counsel strongly urged that it was inadmissible. The judge, however, received it. Groundy had been admitted by the magistrates to give evidence, having been himself, thereby, exonerated from the charge against him; that evidence had been given on oath, voluntarily, and in the presence of the prisoner, who might have put to him any questions which he might have thought proper; the witness was since dead; and his deposition fell within the ordinary rule—being *admissible* in evidence; but what *credit* was due

to it, was, of course, quite another matter. It may, however, admit of great doubt whether this all-important document was not really inadmissible on a technical ground, which a careful examination of the "*caption*" may suggest to criminal lawyers. The governor of the castle was then sworn, and he proved the fact of Groundy's having been found dead in the manner already described; and then the deposition was formally read in evidence by the officer of the court.

Mr Garbutt (the first witness, and who was also the clerk to the magistrates) then proved, that as soon as the above deposition had been made, he, accompanied by a police-officer, went to Crathorne Wood, and they found places in it exactly corresponding with those named in the deposition. At the instance of the prisoner's counsel, Gernon, the officer to whose care the bones had been first committed, was recalled, and produced a flat button which had been found near the bones, and which was of a different description from the buttons which had been spoken of by the witnesses as worn by Huntley; this circumstance was adduced for the purpose, of course, of weakening the evidence of identity. The prisoner's own statement, (*ante*, p. 196), on being committed for trial, was then formally put in and read. This closed the case against the prisoner; and it being nearly seven o'clock in the evening, the court adjourned—the jury being accommodated during the night in the Castle, so that they might enter into conversation with no persons whatever on any pretence.

When the prisoner was placed again at the bar, at nine o'clock on the ensuing morning, his countenance bore marks of the anxiety and agitation which he must have endured in the interval, and looked worn and haggard indeed. His counsel* then rose, and addressed the jury for three hours, with much eloquence and ingenuity. He impugned the credibility of almost all the witnesses—especially those who had given the strongest evidence.

* Mr Sergeant Wilkins.

He denied that there was a tittle of evidence to show that Huntley was not at this moment alive and well—and ridiculed the idea of the skull produced being that of Huntley, commenting with just severity on the absence of the tooth—the great point of the pretended identity. His opinion, he said, was, that the bones had belonged to a female; and his “hypothesis,” that some drunken person had fallen from the bridge into the stream, been drowned, and the body carried down by the current, and forced into the bend of the stream, where they had been found. He proceeded to argue, that the prisoner’s possession of Huntley’s clothes and property—which he denied to be the fact, for the witnesses “could not be depended upon”—was consistent with a scheme between him and Huntley to enable the latter to go to America. He said the evidence was a tissue of exaggerations, misrepresentations, and perjuries—the legitimate produce of the “blood-money”—which had been had recourse to. If Huntley were murdered, again, might it not have been by Garbutt? or Groundy—who had, immediately after his false evidence, gone and hanged himself, like Judas? He sat down, after a powerful appeal, urging on the jury that it was infinitely better that ten guilty persons should escape, than that one innocent person should be condemned; and Baron Rolfe immediately proceeded to discharge his responsible and difficult duty of summing up the whole case to the jury. I took no notes of it; and do not, consequently, feel myself warranted in giving any *detailed* account of so critical a matter from mere recollection. None of the newspapers has rendered me, in this dilemma, the slightest assistance: for, after giving at great length the speech of the prisoner’s counsel (who, of course, must take only one view of the case), the view taken by the judge—the able, experienced, and *impartial* person, on whose view, in nine cases out of ten, adopted by the jury, the prisoner’s fate almost exclusively depends—is thus summarily

dismissed:—“Mr Baron Rolfe then proceeded to sum up, commenting on the evidence as he proceeded, and pointing out such facts as bore for or against the prisoner;”—but what those facts were, or how dealt with by the judge, the reader of the newspaper has not the slightest glimmering notion afforded him. If anything said by me could have the least weight with the gentlemen who perform the honourable and responsible duties of reporting cases of law—especially in great criminal trials—in the newspapers, I would recommend them to give the *evidence* fully, and also a careful account of the judge’s summing up to the jury. The following is the best account I can present of this important summing up.

Mr Baron Rolfe was decidedly adverse to a conviction. He first read over to the jury the whole of the evidence which had been adduced in the case; and then gave a lucid statement of the principles by which the law required them to be governed, in estimating the value of that evidence. He left it fairly to them to judge whether sufficient had been done to satisfy them, beyond all *reasonable* doubt, that the bones produced were those of Huntley; but accompanied by a strong expression of his own opinion, that the evidence was of an unsatisfactory nature. Unless they were satisfied on *that* head, there was an end of the case; for the very first step failed, viz., proving that Huntley was dead. If, however, on the whole of the facts, they should feel satisfied in the affirmative, then came the two other great questions in the case—had Huntley been *murdered*?—and by the prisoner at the bar? Was the evidence strong enough to bring home the charge to him? His lordship advised them to place little or no reliance on the evidence contained in Groundy’s deposition; and then proceeded to analyse the *viva voce* evidence which had been given. Even if the whole of it were believed by the jury, still it was not *absolutely* inconsistent with the fact of the prisoner’s innocence of having murdered

Huntley, and with the truth of his story that he had assisted Huntley in going off secretly to America. Without impugning the general character of the witnesses, his lordship pointed out how unconsciously liable persons were, in cases like these, to fit facts to preconceived notions, giving them a complexion and a connection not warrantable by the reality—and all this without *intending* to state what they believed to be untrue. Many of the facts spoken to were utterly irreconcilable with the supposition of the prisoner's conscious guilt; while others again were certainly difficult to be accounted for on the supposition of his innocence. Some were highly improbable, and others inconsistent; while in one or two instances there were material discrepancies between the witnesses: for instance, Maw spoke positively to seeing *six* shirts, numbered accordingly, up to "W. H. 6;" whereas Bewick proved that there were only *five*—that Huntley and the prisoner had bought a web sufficient to make them five shirts apiece. Again, the time and place where the blood was found—if found it had been—and the two reports of a gun in the wood, were, especially when coupled with the great distance from that locality of the spot where the bones were found, circumstances very difficult to connect with the death of Huntley, in the manner suggested by the counsel for the crown. The case, in fact, was distinguished by many singular circumstances—and the duty which thus devolved on the jury was a serious and difficult one, requiring of them calm and unprejudiced consideration. They were to remember, that it was for the prosecutor to satisfy them of the guilt of the prisoner—beyond all *reasonable* doubt. If, however, they did entertain serious doubts, then it was their duty to consider the case as *not proved*, or—to use a phrase of which his lordship did not approve—"to give the prisoner *the benefit* of the doubt." Finally, they had sworn to give their verdict *according to the evidence*, and that only. It was their solemn duty

to do so, and entirely to disregard any consequences that might follow their verdict.—The jury then retired from court, attended, as usual, by a sworn bailiff, and taking with them the bones which had been produced in evidence. The prisoner eyed them as they went with deep anxiety, and was then removed from the bar, to await the agitating moment of their return. While he is sitting alone in this frightful suspense, and the jury are engaged in their solemn deliberation, let us endeavour ourselves to deal with this extraordinary case, by considering the principles which our law brings to bear upon such an inquiry—the various solutions of which the facts are susceptible, and which of those solutions we should ourselves be inclined to adopt.

Let us consider for a moment what difficulties the law has to contend with in setting about to discover the perpetrator of such an enormous crime as that of murder—that is, of malicious and premeditated killing. In such a case the deed is done, not suddenly, openly, recklessly—the criminal, in the frenzy of the moment, avowing his guilt, or, with the sullen feeling of gratified malice, making no attempt to fly from, or conceal it, but secretly, with time and place so carefully pre-arranged, as to leave no trace of his presence or his acts, and thereby secure every chance of impunity. His success will depend almost entirely, in such a horrid emergency, upon his forethought and self-possession before, during, and after the doing of such a "deed of dreadful note." He will either be alone in his guilt, or select a confederate or confederates not likely to betray him. His object will be entirely to disconnect himself with the transaction, so as to appear equally innocent and ignorant of it; for which reason he must, to the utmost of his ability, enact, without seeming to do so, the part of a stranger, shocked and horrified, with the rest of the world, at the atrocious act. But to do this successfully, how he must be ever on his guard! for if he be taken one instant

unawares, the mortal thrust comes, and all is over. The law, therefore, has often to grope in the dark after the most atrocious criminals. To be cold and circumspect when all mankind are thunderstruck with the appalling discovery—calmly addressing itself to the circumstances *then existing*, even of apparently the most trivial character, amongst which may be found the faint, vanishing traces of the guilty one—some little oversight of his—something said or done, or omitted to be said or done—which no human sagacity could have anticipated or provided against—some delicate *but decisive* evidence of inconsistency, between one single circumstance and a particular person's ignorance or innocence of the black transaction, must be seized upon before it shall disappear for ever—observed accurately, and treasured up safely against the proper moment of disclosure.

Still profoundly anxious equally to avoid accusing the innocent, and allowing the guilty to escape—and aware of the cruel tenacity of public suspicion, when once roused, against the individual, or individuals, towards whom its finger is first pointed, it is slow in announcing the result of its earliest inquiries, even its most stringent convictions, its most conclusive evidences. After a minute and accurate survey of localities, the next inquiry, in case of a murder, is, with whom was the deceased last seen? under what circumstances? what account is given of the matter by such a person or persons? can any *motive* be suggested on the part of any one? Suppose any inconsistency or improbability should be detected in the account given by a suspected person of his last being with the deceased, is it referable fairly to the confusion into which such a startling inquiry might throw the most innocent person, or, the more it is considered, the more of purpose and motive is there discernible—the more of conscious falsehood? Has some answer been spontaneously given, suggestive of a necessity for some further inquiry, the answer to which is at once perceived, by an ex-

perienced and acute observer, to be utterly inconsistent with the supposition of the speaker's ignorance of the transaction in question? Here begins to kindle the law's suspicion, but here, at the same moment, appear her forbearance and humanity—she will not suffer a suspected person to answer a single question upon compulsion, but, on the contrary, deliberately apprises him of the use which may be made of his answers. Suppose, however, the next discovery should be, that the missing person was, within the knowledge of the suspected person, possessed of a considerable sum of money at the time of his disappearance; that the suspected person, up to that time in abject poverty, becomes suddenly and unaccountably in possession of ample funds, and, moreover, is incontestably possessed of the clothes and other articles of personal property which had belonged to the missing person.

Yet suppose, on the other hand, the suspected person attempts no concealment of these facts; and further, makes a statement, not in itself improbable or inconsistent with the previous circumstances of the missing party, tending to throw strong doubt on the presumed fact of his *death*, to say nothing of his murder, which is consistent, on reflection, with all the proved facts of the case, and with that of the missing party's having, for instance, quitted the country, to return hereafter;—hear the law pauses, is staggered, suspects she has taken a false first step, and begins, with increasing anxiety and diffidence, to inquire further into the matter. The suspected person, in the mean time, makes no attempt to escape, though enjoying ample opportunities: and at length the law feels compelled to remove her hand, at least for a while, vehement as may be her suspicions as to his actual guilt. Fresh circumstances are brought to light, tending to the same conclusion, possibly consistent with his innocence, but far more probably with his guilt. Still the suspected party flies not before the darkening features of suspicion, but persists calmly in his original version of the affair.

First, then, said the law in this case, in the autumn of 1830—let me be assured of THE FACT THAT A MURDER HAS BEEN COMMITTED—that the missing person is really dead. Melancholy experience warrants the anxiety of the law on this score, namely, to obtain evidence that the missing person is actually dead. The great Sir Matthew Hale would never allow a conviction for murder, unless proof were first given of the death of the party charged to have been murdered, by either direct evidence of the fact, or the actual finding of the body; "and this," says he, (2 Hale, 290), "for the sake of two cases—the *first*, one mentioned by my Lord Coke: 'The niece of a gentleman had been heard to cry out, *Good uncle, do not kill me!* and soon afterwards disappeared. He, being presently suspected of having destroyed her for the sake of her property, was required to produce her before the justices of assize. She, however, had absconded, whereby he was unable to produce her; but, thinking to avert suspicion, procured another girl resembling his niece, and produced her as his niece. The fraud was detected, and, together with other circumstances, appeared so strongly to prove the guilt of the uncle, that he was convicted and executed for the supposed murder of his niece, who, as it afterwards turned out, was still living.' The *second* case," continues Sir Matthew Hale, "happened within my own remembrance in Staffordshire, where one A was long missing; and upon strong presumptions, B was supposed to have murdered him, and to have consumed him to ashes in an oven, that he might never be found; and upon this, B was indicted for murder, convicted, and executed. Within one year afterwards, A returned, having been indeed sent beyond seas against his will by B, who had thus been innocent of the offence for which he suffered." But by far the most remarkable case of this kind on record is that of Ambrose Gwynnet, who, on evidence which really appeared conclusive and irresistible, was condemned for murder, hanged, and gibbeted;

yet, in consequence of a series of singular circumstances, he survived his supposed execution—escaped to a foreign country, and there actually saw and conversed with the very person for the murder of whom he had been condemned to die. Surely the frightful possibility of the recurrence of such cases as these, warrants the law in requiring full and decisive evidence of the death of the party missing. By this, however, is not meant that actual proof of *the finding and identifying of the body* is absolutely essential. "To lay down a strict rule to such an extent," justly observes Mr Starkie, "might be productive of the most horrible consequences." Accordingly, in *Hindmarch's case* (2 Leach, 571), a mariner being indicted for the murder of his captain at sea, and a witness swearing that he saw the prisoner throw the captain overboard, and proof having been given that he was never seen or heard of afterwards, it was left to the jury to say whether the deceased had not been killed by the prisoner, before being thrown into the sea. The jury found him guilty—with the subsequent unanimous approbation of the twelve judges, to whom the case was referred, and the prisoner was executed. It is indeed easy to imagine cases in which the bodies of murdered persons, especially infants, might be removed at once, and for ever, by the murderers, beyond the reach of discovery.

In the case before us—where was, in 1830, the *corpus delicti*—proof of the fact that a murder had been actually committed? The grounds of *suspicion* were extraordinarily strong; but our law will not convict upon mere suspicion. Then how far was this essential deficiency supplied in 1841, by the discovery of the skeleton, coupled with the additional evidence which that event enabled those engaged in the investigation to collect? First—Was that skeleton the skeleton of Huntley? It was a very singular place for a skeleton to have been found in; the position of the bones was curious, to say the least, strongly favouring the no-

tion of the body to which they had belonged having been hastily doubled up and thrust into the earth in the way suggested; the prominent tooth was a most signal token of identity; and as a *fact*, spoken to by several credible witnesses; the general appearance of the skull certainly suited the descriptions of Huntley's countenance and head given by many witnesses; and its battered, broken appearance behind, was, to say the least, a singular circumstance in the case. But I can add nothing to what I have already presented to the reader on this part of the case—and he must judge for himself.

To come next to the testimony of the witnesses.—Let me first advert to the circumstance of the reward of one hundred pounds offered for the production of such evidence as should lead to a conviction. Whether or not such a procedure be a politic one? whether calculated to assist or obstruct the progress of justice?—in the one case, by stimulating persons who would otherwise be indifferent, into ferreting out real facts; in the other case, by tempting to the fabrication of false evidence for the sake of gain—I shall not stay to inquire. It is in my opinion a question of importance and difficulty; but one thing is clear—the practice affords a constant topic, under the name of “blood-money,” for vituperative declamation on behalf of the most guilty prisoner, and is calculated too often to turn the scale the wrong way—to incline a candid, but anxious jurymen to a distrust of evidence really of the most satisfactory description. Of course, I can speak for myself only; but I believe that in the case under consideration, all the witnesses intended to speak the truth. I think Baron Rolfe was also of that opinion, though he seemed to suspect that one or two of the witnesses, by long brooding over the matter, had got to put things together which ought not to have been so connected, and even to suppose one or two matters to have happened, which had not. There were certainly discrepancies—but none, as it seemed to me, of a very material description; and could it be otherwise,

when such a large body of witnesses came to speak to so many different circumstances, which had happened so long before? An entire concord, in things great and small, would have been a most palpable badge of fraud and falsehood. The circumstance of Huntley's sudden disappearance only the day but one before a particular day, viz., Monday, 2d August, on which *Yarm Fair* was held, will account for a tolerably minute recollection of what happened about that period; and above all, the attention of the whole neighbourhood was directed, *at the time*, to the circumstances attending so remarkable and sudden a disappearance of one of their neighbours and companions. Several of the principal witnesses, moreover, answered promptly in the affirmative to questions put by the prisoner's counsel, manifestly for his advantage—for instance, as to their having heard Huntley himself talk of going to America, and the absence of all concealment by the prisoner of the clothes, &c., belonging to Huntley. As to the discrepancy with reference to the *six* shirts spoken of so distinctly and specifically by Maw, while Bewick, whom he described to have been with him at the time, spoke of there being only *five*, and gave a decisive reason for it, with very great deference to the judge, who deemed it of importance, I think it deserving of little consideration. Bewick *corroborates* Maw up to *five* of the shirts, leaving it plain that Maw is under a *bonâ fide* mistake—after such a lapse of time—as to there having been a sixth. Thus the important fact of the prisoner's being in possession of five new shirts belonging to Huntley, is clearly established; for the mere negative evidence of the old woman, Hannah Best, is unworthy of notice.

Let me first direct attention to the *prisoner's own statement*—a matter which, especially when the statement is made deliberately, is always worthy of attention. “In criminal cases,”—observes the distinguished writer on the Law of Evidence, from whom I have already quoted,—“the statement made by the accused is of essential importance in some points of view. Such is

the complexity of human affairs, and so infinite the combinations of circumstances, that the true hypothesis which is capable of explaining and reuniting all the apparently conflicting circumstances of the case, may escape the acutest penetration:—but the prisoner, so far as he alone is concerned, can always afford a clue to them; and though he may be unable to support his statement by evidence, his account of the transaction is, for this purpose, always most material and important. The effect may be, on the one hand, to suggest a view which consists with the innocence of the accused, and might otherwise have escaped observation; while, on the other hand, its effect may be to narrow the question to the consideration whether that statement be or be not excluded by the evidence."

Now, in the present case, the prisoner's statement corroborates a considerable portion of the evidence. He admits a full knowledge, on Thursday, the 22d July 1830, of Huntley's possession of £85, 16s. 4d., and that Thursday, 29th July 1830, was "the very last time he clapped eyes on" Huntley. Nevertheless, four witnesses speak decisively to the fact of their having seen him in Huntley's company at four different periods of the ensuing memorable day, Friday—viz. 5 o'clock A. M.; 3 or 4 o'clock P. M.; 8 o'clock P. M.; and 9 or 10 o'clock P. M.—on the last of which occasions, the prisoner (having a gun in his hand), Huntley, and Garbutt being together, and going towards Crathorne Wood, to which they were then very near. Was this a mere error of recollection, or a wilful falsehood of the prisoner's? Or are all the four witnesses contradicting him—each speaking to a different period of the day, and to a different place—in error, or conspirators and perjurers? If they be speaking the truth, it is next to impossible to believe that Goldsborough could have *forgotten* the circumstance of his having been so much in Huntley's company, up even to within an hour or two of his being so mysteriously missing—knowing that his movements in connection with Huntley had immediately become the subject of

keen inquiry, and most vehement suspicion. If, then, he deliberately falsified the fact, what are we at liberty to infer from that circumstance as to his object and motives for so doing? Again, before he made the statement, he had heard all the evidence against him read over—and an essential part of it was that respecting his having been, so soon after Huntley's disappearance, in possession of his clothes, and also of a large sum of money. Yet he makes no allusion to these matters—neither denies nor accounts for them in any way whatever: and it must not be forgotten that, when arrested by Gernon in June 1841, he denied having ever had any of Huntley's clothes, or his watch. He makes no attempt to account for his sudden possession of so much money between the period of Huntley's disappearance and the spring of 1831—though he did state *then*, that he had married a wife with *eighty* pounds! Nor does he offer any explanation of the contradictory accounts which he had given as to Huntley's having gone to America, and his—the prisoner's—possession of the clothes, &c.; nor re-affirm any of them. In short, his statement appears as remarkable for what it does *not* contain, as it is important for what it *does*. I also consider it characterised—on the supposition of his guilt—by no little tact and circumspection; for he frankly admits a great deal which he felt he might be contradicted in, if he were to deny it—viz., his knowledge of Huntley's receipt of the exact sum (within a few pence) on the day of his actually receiving it; suggesting a motive for his absconding to America, and for his having been so frequently in the prisoner's company—asserting that he finally parted openly with Huntley at the shop door of Farnabay, in the town of Hutton-Rudby; and contenting himself with a brief but solemn denial of the truth of Groundy's statement, that the three men had been with Groundy in Crathorne Woods, or Weary Bank Woods.

That statement, and its author's suicide immediately after making it, invest the whole facts of the case with

an air of extraordinary mystery. It contains on the face of it surely a glaring improbability—namely, that the prisoner should have been so insane as to commit himself gratuitously and irretrievably to one who he knew might immediately have caused his apprehension, and secured incontestable proof of his guilt in the murdered body. Stranger still, perhaps, is it, that if Groundy really had no further part in the business than he represents in that statement, he should not have disclosed the guilt of Goldsborough at once, instead of continuing ever after burdened with such a guilty secret, and for no adequate motive. It is to be observed that one of the witnesses, Anthony Wiles (*ante*, p. 209), disclosed *incidentally*—(for his evidence was called with another view)—a circumstance worthy of attention—viz., that one of the men with whom the prisoner was drinking on the Saturday night after Huntley's disappearance was *Groundy*: yet the prisoner says, "if it was the last words I had to speak, I never was with him." At all events, a faint ray of light is thrown on the case, by the fact that Groundy was actually acquainted with the prisoner, and in his company about the very time of the transaction deposed to. Again, the truth of his description of the localities is confirmed by those who went to examine them. The prisoner asked him nothing when he made that statement, and the prisoner was invited to question him: *was it because he dared not?*

Let us now follow the course of events. I take it to be proved beyond all reasonable doubt, that, contrary to the deliberately signed statement of the prisoner, he was seen with a gun about ten o'clock at night on Friday, 30th July 1830, in company with Huntley and Garbutt, near a lane or bridle-road leading to Crathorne Wood. That gun he had purchased only a few days previously, but after his knowledge of the fact of Huntley's receipt of his money. The report of a gun is heard from the wood within an hour or an hour and a half afterwards; Huntley is never seen or heard

of any more; and between twelve and one o'clock that night, the prisoner is observed stealing out of his house, to go and listen at the constable's house, and, after being so occupied for a minute or two, return to his own. The next time that he is seen is when drinking in company with Groundy late on Saturday night. But, to return for a moment to the wood—it is certainly an embarrassing fact that the witness spoke to having heard *two* reports within half a minute of each other; whereas the prisoner's was a single-barrelled gun. If the witness's recollections were accurate—which I saw no reason whatever to doubt—how is this fact to be accounted for? If the prisoner's were the only gun there, it is next to impossible that he could have so rapidly reloaded and fired again, especially under the horrid circumstances supposed. Was there, then, a second gun, which had been unobserved by the witness, and in Garbutt's hand?—or beforehand, concealed, in readiness, in the wood?—or had he or the prisoner a *pistol* also, with which to repair an ineffectual first shot?—or was one of the shots fired by a poacher in another part of the wood? However wide of the mark may be all these speculations, there was one fact in evidence respecting this gun which I venture with profound respect to say, that I was surprised at the learned judge's omitting to comment upon—to the jury. A day or two after the disappearance of Huntley, Richardson called on the prisoner for payment of this gun, when the prisoner refused, and returned it, saying that he did not want it, *and had not used it*: on which Richardson put his finger down the muzzle to try it, and drew it back all blackened with discharged powder, and thus convicted him of a falsehood. What inference may we draw from this fact?

Then, as to the blood found on the road—a fact spoken to by two credible witnesses at the trial, one of them having also named it to the constable the same day on which he observed it—was it *human* blood? If so, it was ly-

ing very near the spot where Huntley had last been seen; and if *his* blood, it must have been lying there, moreover, two days and two nights—i.e., from Friday midnight, till nine o'clock A.M. on Monday morning. The blood was described as “*stale-looking*,” and the weather had been fair and dry, but the road was not a much frequented one. It was spoken of by one witness as a “*pool*,” but if so, it could not have lain there since the Friday night; blood then shed would have become a dark coagulated mass, possibly covered with dust. Again, on the supposition of its having been Huntley’s blood, he must have been murdered on the high-road; was that a probable thing, when they were close by the secret shades of Crathorne Wood, to which they were all seen going? May they have gone into the wood? May Huntley have become alarmed at their conduct—made his way out of the wood into the high-road, and there received the murderous fire of his assailants? But the spot where the blood lay was, moreover, from four to six miles’ distance from Stokesley Beck, where the bones were found. When and by whom was Huntley’s body taken to Stokesley Beck? It could not have been taken the same night,—at least, it is very highly improbable that such would be the fact; for the prisoner was at his own house between twelve and one o’clock that night, if the witness was correct in his recollection as to the hour; and, according to Groundy’s account, the body of Huntley was lying in the wood on Wednesday the 4th August. Where then had it lain between the Friday night and the Wednesday following? In a secret part of the wood, covered up? or had it been buried on the Friday night temporarily, in the potato garth, where Maw said he saw some earth that looked newly dug?

I own that I am not satisfied with the last part of Maw’s evidence; for it is hard to believe, that had he really witnessed so suspicious an appearance, at such a spot, after such a supposed tragedy, and when actually in quest

of the body, he must have called attention to it, and dug it up. I ought to mention, however, that it did not appear that Maw was then aware of the circumstance of the blood on the road. Here let me put together two little circumstances in the case, which may suggest not an unimportant inference. It would appear highly probable, assuming the bones to have been Huntley’s, that for obvious reasons his body would have been stripped of its clothing, to lessen any subsequent chances of detection. Now, there were no vestiges of clothing found with the bones, and eleven years was not, I should think, a sufficiently long space of time to admit of woollen clothes decaying or mouldering away so entirely as to leave no trace of them—not even buttons of bone or metal—with the exception of one large flat button, which was found at or near the spot, and not answering to the description of any belonging to Huntley, and possibly there by mere accident. If Huntley had been shot, his clothes must have been stained and steeped in blood, and the safety of the murderer or murderers would require the destruction of such evidences of their guilt. Now, several witnesses speak to the fact of Goldsborough’s being seen alone a day or two after Huntley’s disappearance, in his house, late at night, with a large fire (in the first week of August) burning something that gave out a strong “*smell of woollen burning*.” May these have been the bloody clothes of Huntley?

To proceed. The prisoner, seen in Huntley’s company up to within a few hours of his sudden and total disappearance, is seen, the day but one afterwards, laying out £7 in the purchase of a cow, and in possession of both bank-notes and gold—having been, up to a very short time before, in the most abject poverty, and even destitution;—and, moreover, in possession of a large quantity of clothes belonging, unquestionably, and admittedly by the prisoner, to the missing man. This of itself, unexplained, is sufficient to raise a violent pre-

sumption of the prisoner's guilt. But here also great caution is necessary. "If a horse be stolen from A," says Sir Matthew Hale, "and the same day B be found on him, it is a strong presumption that B stole him. Yet I do recollect that, before a very learned and wary judge, in such an instance B was condemned and executed at Oxford assizes: and yet, within two assizes afterwards, C being apprehended for another robbery, upon his judgment and execution, confessed that *he* had been the man who stole the horse, and that, being closely pursued, he had desired B, a stranger, to walk his horse for him, while he turned aside, as he said, for a necessary occasion, and escaped, and B was apprehended with the horse, and died innocently."

Now, in the present case, here is a man suddenly missing, known to have been possessed of a considerable sum of money—the prisoner to have been aware of it—to have been seen in his company up to almost the last moment before his disappearance—to have become suddenly enriched, having previously been a pauper—and in possession of many articles of clothing belonging to the missing man. All *these* circumstances point one way; but then, on the other hand, no attempt was made by the prisoner to conceal his possession of either money or clothes, nor to escape or quit the neighbourhood during the time when suspicion was hottest. Then he gives certainly contradictory answers concerning the way in which he became possessed of these matters—but all *may* be reconciled with the story he tells, that the missing man has gone to America, and that he (the prisoner) assisted him, and still seeks to baffle the pursuit of his absent friend. But if the latter story be true, is it probable, is it credible, that Huntley, meditating such an expedition, would first strip himself of all his newly-purchased clothes, leave them behind him, and never afterwards come or send to claim them? All the facts of the case, however, as fairly and as accurately stated as I know how to state them,

are now laid before the reader; and is not this indeed a striking specimen of the importance of, and the difficulties attending, circumstantial evidence?

I shall proceed to propose several hypotheses for consideration, in order to see whether any of them will reconcile *all* the circumstances, or which of them will reconcile *most* of them, and in the most natural manner. "The force of circumstantial evidence," observes Mr Starkie, "being exclusive in its nature, and the mere coincidence of the hypothesis with the circumstances being, in the abstract, insufficient, unless they exclude every other supposition, it is essential to inquire, with the most scrupulous attention, what other hypotheses there may be agreeing wholly or partially with the facts in evidence. Those which agree even partially with the circumstances are not unworthy of examination, because they lead to a more accurate examination of those facts with which, at first, they might appear to be inconsistent; and it is possible that on a more accurate examination of these facts, their authenticity may be rendered doubtful, or even altogether disproved." The same able writer from whom this passage is quoted has another observation, which also should be kept in view, while dealing with the facts of this case.

"To *acquit*, on light, trivial, and fanciful suppositions, and remote conjectures, is a virtual violation of the juror's oath; while, on the other hand, he ought not to *condemn*, unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused, and unless he be so convinced by the evidence, that he would venture to act upon that conviction, in matters of the highest concern and importance to his own interest."

First Hypothesis.—Huntley really did go off in the way alleged, to America or elsewhere, to avoid his creditors, and also his wife, from whom he had already separated, and to be relieved from the burden of supporting her. He may have since died a natural—an accidental—or a violent death,

under circumstances depriving him of the opportunity of disposing by will of what he knew was coming to him; and this death may have happened very shortly after his departure. He left the more valuable portions of his clothes and property and a great portion of his money in Goldsborough's hands, to be forwarded to him at the first convenient opportunity; and Goldsborough acted dishonestly by him in disposing of the clothes, and spending the money. Huntley may be now alive, and meditating a return home.

Second Hypothesis.—Huntley is dead, and was murdered by Garbutt, in whose company he had been left by Goldsborough.—Garbutt being also pursued by the officers of justice for other offences, hastily absconded, and may now be dead, or abroad.

Third Hypothesis.—Groundy was the actual murderer, possibly instigated by Goldsborough; or Goldsborough was only subsequently informed by Groundy of the murder, and insisted on receiving a great portion of the money, as the price of his silence.—He committed suicide from fear lest his guilt should come out in court, at the trial—through his being unable to stand solemn and public questioning upon the subject. He may have been also partly influenced by remorse at having wrongfully sworn away the life of Goldsborough.

Fourth Hypothesis.—Groundy, Garbutt, and Goldsborough, or Groundy and Goldsborough, were all concerned as principals in the murder. The second gun was Groundy's, who joined them in the wood.

Lastly.—With reference to the prisoner at the bar, let us inquire more fully, whether his guilt, or innocence, be more consistent with the proved facts of the case.

If *innocent*, he must stand or fall by the story of Huntley's having left him on his way to America, after in vain pressing Goldsborough to accompany him. It certainly does appear that Huntley had contemplated such a step, and there are other circumstances favouring the notion that Goldsborough and Huntley had been busily

concerting a scheme for Huntley's going off privately to America. He was, during the whole of the time between the 22d and 30th July, incessantly coming over to Goldsborough, and remaining in his company. At five o'clock in the morning of the day of his disappearance, he was seen coming to Goldsborough's house, where he was immediately admitted. They may have arranged that Goldsborough should go and fetch Huntley's things, the same day, from Huntley's to Goldsborough's house, to keep for, or send after, Huntley; in pursuance of which arrangement Goldsborough went, and returned with the articles in question in a sack, during the afternoon of the same day. It may have been a part of the arrangement, that Huntley should leave a considerable portion of his money in Goldsborough's hands, for safety's sake—to be remitted as Huntley might want it. Or Goldsborough might have promised and intended to follow him shortly afterwards; but fondness for his children may have kept him back—and he may have determined on playing Huntley false, and appropriating the money and property left with him to his own use, relying on Huntley's not venturing to return, lest he should be saddled with the support of his wife; but if he should return, then resolving to impose on him as much difficulty as possible in claiming his own, by converting his money into articles of furniture and farming purchases. His contradictory accounts of Huntley's movements are consistent with his wish to baffle the pursuers of Huntley, by putting them on false scents; and this may serve to explain his light jocular tone in speaking of Huntley's absence:—"You'll all see, by-and-by, whether he's murdered or not." In this view of the case, the blood on the road, the gunshot in the wood, and the burning of clothes soon afterwards, if such facts really happened, have no true connection with each other; and the skull and bones produced, were not the skull and bones of Huntley. Let it, moreover, be borne in mind, that Goldsborough

did not attempt any concealment of property or money, or escape—neither after nor before suspicion had settled on him—nor even when set at liberty after his arrest in the month of July 1841.

But if the prisoner be *guilty*, let us imagine that, from the time of learning that Huntley had become possessed of so considerable a sum of money, the prisoner had conceived the idea of destroying him in order to obtain that money, and in such a manner as to warrant the belief of the neighbourhood that he had only carried into effect his previously expressed intention of going off to America. That in pursuance of such an intention, Huntley had sent his clothes, &c., on the Friday, to the prisoner's house—that, in short, they formed the contents of the bag or sack, which the prisoner was seen carrying into his house on the Friday afternoon. That, either alone or in company with Garbutt or Groundy, he allured Huntley into Crathorne Wood, under the pretext of shooting a hare, and enjoying a pleasant supper together; which Huntley, who might have become loquacious through previous drinking with the prisoner, and possibly Garbutt and Groundy, or one of them—mentioned to Maw, in a merry humour, on meeting him on the road, as described by Maw. That he may have been shot, either in the wood, or on the high-road, where the blood was found; and his body buried for a while, or concealed in the wood till it could be permanently disposed of. That the prisoner then returned to his own house, and having been, possibly, alarmed by some noise into the suspicion that his motions had been watched, slipped out, shortly afterwards, to ascertain whether there were any grounds for his fears. That he then cleansed himself from any marks of the deed in which he had been engaged, and resolved on the course he should pursue—namely, to give out that he had sent Huntley on his way to America. That, finding the current of suspicion setting in more strongly against him than he had an-

ticipated, he resolved, on due deliberation, distrusting the chance of escaping by flight, to stay and brave it out by a bold and consistent adherence to the fiction of Huntley's having gone off secretly to America. That if neither Garbutt nor Groundy had been originally parties to the murder, the prisoner may have taken both, or either, subsequently, into his confidence, to secure his or their assistance in successfully disposing of the body; rewarding him or them by a sum of money, which he might have represented as being the greater portion of what he had found on the person of Huntley. That, the prisoner, either alone, or assisted by one or both of these men, afterwards disinterred the body, if temporarily buried, or removed it from any place where it had lain hid, and carried it to Stokesley Beck, at night-time, and thrust it naked, into a hole which they dug into the bank of the Beck, as a place distant, secluded, and likely to escape suspicion—bringing home the bloody-clothes and burning them as soon as possible. That subsequently, he became agitated, silent, and reserved—tormented by his own reflections, and terrified by the continued strength of public suspicion, and the search after Huntley's body. That his object being to divert the searchers, if possible, from proceeding towards Stokesley Beck, he conceived himself likely to attain that end by himself suggesting that the body might be found there—a bold and desperate expedient, founded on the belief that any suggestion of that sort by *him*, would certainly be disregarded. That, finding the search at length abandoned, and the vehemence of public suspicion to be abating, but yet rendering his continuance at Hutton-Rudby troublesome and dangerous, he resolved to transfer his residence, under a feigned name, to Barnsley. That when, many years afterwards, so abruptly challenged as the murderer of Huntley, he was thrown off his guard, so as to forget the notoriety of his having possessed the clothes and property of Huntley, and

deny that fact to the officer who took him into custody. That he was dismayed by the appearance of Groundy against him, and dared not ask him any questions, lest he should thereby reveal more of the transaction; and, consequently, felt compelled to content himself with a general denial of Groundy's statements. That he inwardly shrunk from the frightful spectacle of the shattered skull, knowing it to be that of Huntley—and that horror looked up at him from these eyeless sockets.—But stay! A sudden stir announces the return, after a long absence, of the jury; and the crowded court is quickly hushed into agitated silence, as the jury enter—the foreman carrying with him the skull and bones; and the prisoner is replaced at the bar to hear his doom. The judge has in readiness, but concealed, the black cap, should it become, within a few moments, his dreadful duty to pronounce sentence of death upon the prisoner. The names of the jury are called over one by one, and the prisoner eyes them with unutterable feelings. Then comes the fearful moment.

Clerk of Arraignment.—Gentlemen of the Jury, are you agreed upon your verdict? Do you say that Robert Goldsborough, the prisoner at the bar, is guilty of the murder and felony with which he stands charged, or not guilty?

Foreman.—NOT GUILTY.

Clerk of Arraignment.—Gentlemen of the Jury, you say that the prisoner at the bar, Robert Goldsborough, is not guilty. That is your verdict; and so you say all?—(To the Governor of the Castle)—“Remove the prisoner from the bar.”

The verdict did not seem wholly unexpected by the audience; and it was received in blank silence. The prisoner exhibited no symptoms of satisfaction or exultation on hearing the verdict pronounced; but maintained

the same phlegmatic *oppressed* air which he had exhibited throughout. As soon, however, as he was removed from the bar, and before he had quitted the dock, he whispered, with tremulous eagerness, in the ear of the officer—“*Can they try me again, lad?*” “No; thou's clear of it now, altogether,” was the reply: on which Goldsborough heaved a very deep sigh, and said, “If they'd put me on my trial in 1830, I could have got plenty to come forward and clear me.” Within half an hour afterwards, he was seen dressed as he had appeared at the bar of the court, only that he had his hat on, and carried a small bundle of clothes tied up in a blue and white cotton handkerchief under his arm, walking quietly out of the frowning gates of York Castle, once more a free man, to go whithersoever he chose. He was quickly joined by two mean-looking men; and spent the next hour or so in walking about the town, and looking into the various shop-windows, occasionally followed by a little crowd of boys and others who had recognised him.

How now say you, candid and attentive reader? Had you been upon the jury, should you have said—*Guilty*, or *Not Guilty*?

*** I asked a very eminent judicial personage to read this sketch, and then favour me with his opinion as to the prisoner's guilt or innocence. His lordship did so, and said, “I have never read or known of a more interesting, and seldom of a more difficult case. Had I tried it, I should have felt great anxiety; but I think that, upon the whole, I should have been inclined to tell the jury that the evidence was not *quite* strong enough to warrant a conviction. The Scottish verdict of ‘*Not proven*,’ would have exactly met the case; and if I had had the power to recommend such a verdict, my mind would have been greatly relieved.”

THE DUKE OF MARLBOROUGH.*

MR ALISON'S "Life of the Duke of Marlborough" is an enchaining romance—the romance of a dazzling but stern reality; and Marlborough is its equally stern and dazzling hero. It is, moreover, a romance equally exciting and instructive to both soldier and civilian; told, too, with the scrupulous truthfulness befitting reality, and by one of sagacity sufficient to perceive that, by so doing, he would preserve the ethereal essence of the romance, rendering it intense to readers for mere excitement (whose name, alas! is now legion), while irradiating the path of plodding inquirers after mere matter of fact. We assert that in these volumes are to be found many essential elements of the most enthralling romance of actual life.† Hairbreadth personal 'scapes of the hero, from captivity and death; glorious battles, but of long doubtful issue; devouring and undying love; plots and counterplots without end, now on a grand, then on a paltry scale, national and individual; implacable animosities, deadly jealousies; enthusiastic gratitude suddenly converted into execrable ingratitude;

* *Blackwood's Magazine*, Feb. 1852.—"The Life of John Duke of Marlborough; with some Account of his Contemporaries, and of the War of the Succession. By ARCHBOLD ALISON, LL.D. Second edition, greatly enlarged. 2 vols. 8vo. William Blackwood and Sons, Edinburgh and London. 1852."

† "How much do the events of real life outstrip all that romance has figured or would venture to portray?" observes Mr Alison (vol. i. p. 408), in describing the pious and enthusiastic greeting given by Prince Eugene to his aged mother, whom he had not seen since his youth, having been driven into exile by the haughty Louis XIV., on whom he had since inflicted such crushing defeats, and at whose expense he had become so great a hero! This interview took place at Brussels, whither Eugene eagerly repaired, immediately after the bloody victory of Oudenarde. "The fortnight I spent with her was the happiest of my life," said her laurelled son.

court favour now blazing in its zenith, then suddenly and disastrously eclipsed; stern fortitude, magnificent heroism amidst exquisite trials and tremendous dangers; the wasting anxieties of the statesman's cabinet and the warrior's tent; what would one have more? And yet there is more, and much more, to be found in these volumes, as we shall hereafter see.

Mr Alison's hero is he who was known as the "handsome Englishman;" a title conferred upon him, not by sighing ladies fair, but by a man who saw him in his blooming youth, in his twenty-second year—by no less a personage than the great warrior Turenne, under whose auspices he began playing, very eagerly, the brilliant game of soldiering. This was in the matter, as the lawyers would say, of the French against the Dutch, wherein he learned the art by which he afterwards gave his teachers fearful evidence of the extent of his obligation to them.—And he *was* handsome. Of that fact Mr Alison has enabled us to judge, by a fine portrait, after Sir Godfrey Kneller, of Marlborough when in the prime of manhood. We cannot conceive a nobler countenance than here looks on the reader; it is the perfection of manly beauty. There is a certain serene frankness, a dignity, a subdued vivacity and power in those symmetrical features, which would have enchanted Phidias. The Englishman thinks, and his pulse quickens the while, of that countenance, now so tranquil, suddenly inflamed at Blenheim, Ramilies, Oudenarde, Lille, Malplaquet; then excited by the anxieties of harassing statesmanship, and the indignities inflicted by envy, malevolence, and ingratitude; by-and-by relaxed with grief, by the loss of an only son; and finally beaming with proud tenderness upon a beau-

tiful, gifted, idolised, and idolising wife—one who, after his death, loftily spurned a ducal suitor for her widowed hand, saying, "If you were the emperor of the world, I would not permit you to succeed in that heart which has been devoted to John Duke of Marlborough."* No man or woman can read these words without a swelling heart, and a belief, which he would be loth to have disturbed, that they indicated a noble nature. What must such a man, he will say, have thought of such a woman? what must such a woman have felt for such a man? Each bound to the other, through all the vicissitudes of life, in adamant bonds of love and admiration! each, too, possessing great qualities, materially affecting those of the other, as well for good as for evil!

Nor was this remarkable man possessed of a handsome countenance only. His person and gesture were dignified, graceful, and commanding. He had indeed a signal *presence*; he was a perfect master of manner, and his address was so exquisitely fascinating as to dissolve fierce jealousies and animosities, lull suspicion, and even beguile the subtlest diplomacy of its arts. His soothing smile and winning tongue, equally with his bright sword, affected the destinies of empires. Before the bland, soft-spoken commander, "grim-visaged war," in the person of Charles XII. of Sweden, "smoothed his wrinkled front," and the rigid warrior-king, at his instance, bade adieu to the grand and importunate suitor for his alliance, Louis XIV., whom it was the great mission of Marlborough to defeat and humble. The consummate diplomatist was never—no, not for an instant—thrown off his guard: his watchfulness knew no relaxation; and his penetration into the designs of the most astute was quick as profound. He was, in fact, equally great in camp and cabinet—born for the conduct of affairs, which he regulated with a sort of frigid masterliness: a condition, however, which he maintained by rigorous self-command; for, as we shall

* ALISON, vol. ii. p. 320.

in due time see, he had powerful feelings and quick sensibilities to suppress and restrain. Lord Bolingbroke said of him, that "he was the greatest general and greatest minister that this country or any other had produced—the perfection of genius, matured by experience." If we may presume to say it, he appears to have been one of those raised up by Providence as a great instrument, for a great exigency in the affairs of mankind. It is true that Marlborough had his faults, and grave ones; but the genius of history is, in such a case, equally outraged by any attempt at suppression or exaggeration. "In estimating the character of the dead," justly observes Mr Aytoun, in his able vindication of the memory of Claverhouse against certain incautious allegations of the most brilliant living historian, "some weight ought surely to be given to the opinion of contemporaries;" and one of the Duke of Marlborough's most eminent military rivals and political opponents, the celebrated Earl of Peterborough, said of him, in a noble spirit, "He was so great a man, *that I have forgotten his faults*."† But can History? No: she abdicates her functions, unless she records truthfully, for the guidance of mankind, both the faults and the excellencies of the great characters whom she has undertaken to delineate. Without scrupulous fidelity here, history may degenerate into false, dishonest, and mischievous eulogy on the one hand, or, on the other, into a libel and a lie—a lie of unspeakable baseness, for it is regarding the dead, who cannot burst indignant from the tomb in which they were laid with honour, it may have been amidst the tears and sighs of a proud and bereaved nation:—a lie of unspeakable wickedness, for it is designed to live, and, living, to lie to all future ages, in proportion to the strength of the pen which writes it. These are truths to which the heart of mankind instantly responds; and we enunciate them here only by way of making *continual claim*, to adopt

† Mr Alison seems to attribute this speech, or a similar one, to Lord Bolingbroke.

the now exploded phraseology of English law, upon the attention of all biographers and historians. Not that we think this to have been rendered necessary by any recent and glaring cases—for we know of none whatever among English men of letters, in the departments just referred to, in which we have detected any *intention* to slander the dead, or, either favourably or unfavourably, misrepresent the living. We indignantly repudiate the bare possibility; and only desire to impress the necessity of a caution, all but excessive, in making derogatory imputations upon the dead, through placing too great a reliance upon the tittle-tattle of days gone by, written or spoken; upon the means of knowledge possessed by those who gave currency to discreditable rumours; and the trustworthiness of contemporaries, often eager rivals outwitted in the game, and distanced in the race of life and distinction, by him whom they thereupon revengefully resolve to blacken before the eyes of posterity. We concur, in a word, cordially with Lord Mahon in saying, that which we are bound to add he has uniformly acted up to, in his candid, luminous, and elegant History:—"Unjustly to lower the fame of a political adversary, or unjustly to raise the fame of an ancestor—to state any fact without sufficient authority, or draw any character without thorough conviction, implies not merely literary failure, but moral guilt."*

That the Duke of Marlborough is one of the foremost figures in the picture of England's glory, in that radiant quarter crowded by her warriors and statesmen, is undeniable; and so is Lord Bacon, who stands forth among her philosophers a very giant. But would any biographer or historian deal justly, who failed to apprise us of the real blot upon the character of each? Surely, however, he would not dwell upon that blot with eagerness or exultation; but point it out in the spirit of a benignant sadness; in the reluctant discharge of a

painful duty; and that only after having deliberately weighed everything that a judicial mind would require, before arriving at a conclusion so humiliating to humanity.

Four living writers, of high personal character, of great eminence in the ranks of literature, and characterised almost equally by painstaking industry in the collection of materials, but clothing the results of their researches in very different styles of composition, have respectively placed on record their deliberate estimate of the moral and political character of the Duke of Marlborough. These writers are—Mr Hallam, Lord Mahon, Mr Macaulay, and Mr Alison. Mr Hallam's writings are already English classics. He is a stern, straightforward, independent, learned man, of great and exact knowledge. His style is pure, yet characterised chiefly by a kind of rugged vigour. Thus has *he*, in his Constitutional History, dealt with the Duke of Marlborough:—"What, then, must we think, if we find, in the whole of this great man's political life, nothing but ambition and rapacity in his motives, nothing but treachery and intrigue in his means? In short, his whole life was such a picture of meanness and treachery that we must rate military services very high indeed, to preserve any esteem for his memory. * * * The extreme selfishness and treachery of his character make it difficult to believe that he had any further view than to secure himself in the event of a revolution, which he deemed probable. His interest, which was always his deity, did not lie in that direction; and his great sagacity must have perceived it." These are blighting words, and they fall from a writer of great authority, yet liable to the suspicion of occasionally labouring, however unconsciously, under political bias. Lord Mahon, in his "History of England," speaks with the utmost temper, forbearance, and unwillingness, but in unequivocal condemnation of one important act of Marlborough. He states that "the extent of infidelity" to the cause of the Revolution, among lead-

* *History of England, from the Peace of Utrecht to that of Aix-la-Chapelle*, vol. i. p. 3.

ing ministerial statesmen, "which has more recently come to light from the publication of original papers, is truly appalling. Above all, it is with shame and sorrow that I write it, the Duke of Marlborough's conduct to the Stuarts is, indeed, a foul blot on his illustrious name." After reciting facts which seem, unfortunately, incontestable, he adds mournfully, "What defence can possibly be offered for such conduct?" Mr Macaulay writes in a spirit of deadly detestation of Marlborough. This gentleman, it need hardly be said, is a gifted disciple of the same political school as Mr Hallam—a man of very great ability; and his *History* promises to constitute a splendid addition to the stock of enduring English literature. It will also have a powerful and widespread influence, whether for good or for evil, over the minds not only of literary and political students, but of that huge class who are content to let others think for them; for its tone is one ever confident and peremptory; the knowledge which it displays is obviously as extensive as minute; he is a consummate master of English, and writes with such alluring brilliance as renders it nearly impossible to lay down his volumes till the perusal of them has been finished, or to pause, as one goes along, to reflect and weigh. Hence the great moral responsibility which such a writer incurs; and all are interested in warning him, as he proceeds with his great undertaking, to throw himself as thoroughly as he may be able into the *judicial* character. We wish that such a writer had never cared a single straw for either Whig or Tory. As for his style, it is one of uncommon force and vividness, but somewhat deficient of the simplicity, *repose*, and dignity of history. What a contrast to the immortal composition of Hume! to whom he stands in perilous proximity, absolutely challenging comparison. Before parting with this brilliant writer, we would, as one of the public which is proud of him, offer him, in the most friendly spirit, an earnest hint that he would, in con-

tinuing his labours, disengage the true events of history from merely local and temporary details; and be searchingly on his guard in dealing with characters and principles which run counter to his own views and opinions. Let us now see in what terms Mr Macaulay has ventured to speak of one of the greatest men who ever figured in our history. He says that Marlborough was a man "not less distinguished by avarice and baseness than by capacity and energy—as one whose renown was strangely made up of infamy and glory; thrifty in his very vices, levying ample contributions on ladies enriched by the spoils of more liberal lovers." A "letter written with a certain elevation, was a sure mark that he was going to commit a baseness." Another is written "with that decorum which he never failed to preserve in the midst of guilt and dishonour." And finally, he *already* thus stands before posterity in the pages of Mr Macaulay:—

"So inconsistent is human nature, that there are tender spots even in seared consciences. And thus this man, who had owed his rise in life to his sister's shame, who had been kept by the most profuse, imperious, and shameless of harlots, and whose public life, to those who can look steadily through the dazzling blaze of genius and glory, will appear a prodigy of turpitude, believed implicitly in the religion which he had learned as a boy, and shuddered at the thought of formally abjuring it. A terrible alternative was before him. The earthly evil which he most dreaded was poverty. The one crime from which his heart recoiled was apostasy. And if the designs of the Court succeeded, he could not doubt that between poverty and apostasy he must soon make his choice. He therefore determined to cross those designs; and it soon appeared that there was no guilt and no disgrace which he was not ready to incur, in order to escape from the necessity of parting either with his places or with his religion."*

* MACAULAY'S *History of England from the Accession of James II.*, p. 255.

Such was Marlborough, according to Mr Macaulay; and when we bear in mind that he has yet to deal with thirty-four years' public life of this illustrious personage, whom he may at this moment be painting in, if possible, still darker colours than the above, we may feel excused in feeling anxiety, not only on patriotic grounds, but on Mr Macaulay's own account.

The last of our four living writers dealing with Marlborough is Mr Alison*—a gentleman who has conferred world-wide service, and earned an enduring celebrity in English letters, by the fidelity and power with which he has recorded the mightiest series of events which the world has hitherto seen, and enforced their true teaching. That his "History of Europe" is not open to criticism, it were childishness to deny; but the *maculæ* disappear when set against his uniform and even fastidious fidelity, his prodigious industry, his passionate candour in dealing with men and events, his huge accumulation of important, instructive, and deeply-interesting facts, which but for him might have been irrecoverably dispersed, and his vivid and picturesque eloquence. Few must they be of his readers who have not hung breathless over his battle-scenes on flood and field; hearing again the awful roar of the cannonade, the deadly rattle of musketry, the thundering charge of cavalry, the steady tramp of vast columns of infantry; beholding the glistening of sabre and bayonet, and all the bloody scene, now fearfully visible, and then, again, as fearfully invisible, for a while, amid the sulphurous smoke! Again, Mr Alison always *places* his attentive reader well, before entering into the battle or siege; giving him an admirable idea of localities, without a knowledge of which his picture would become like the cloudy but glistening confusion of the latter productions of Turner. All this, however, is subordinate to the moral and political aspect of those turbulent times and multitudinous transactions with which Mr Alison had to deal: an aspect which he keeps steadily before his reader's eye,

* Since become Sir Archibald Alison, Bart.

and thus instructs while delighting him; making the past truly and practically tributary to the future. He is ever watchful of the effect produced on affairs, civil or military, by overmastering personal character, which, with its workings, he develops patiently and distinctly: and so with combinations of men and parties; with systems of policy abruptly changed, or subtly varied to suit purposes, and gain objects, not at first sight visible or easily suspected. Either by natural constitution or from long habit, there may be observed in Mr Alison a disposition to take large views of human affairs; to deal with mankind and their transactions in masses, and on a grand scale: a tendency this, which, if accompanied by accurate thinking, and due attention to details, proportionably indicates the highest order of historical genius. But we must repeat the remark, and with it close these general observations, that Mr Alison's capital qualification as an author, especially a biographical and historical author, appears to us to be his unvarying love of truth, in comparison with which all other objects which can be contemplated by an author are absolutely as nothing.

It was with no little interest that we saw the announcement of Mr Alison's being engaged upon an elaborate Life of Marlborough; who would then be depicted by the same faithful pencil which has delineated Wellington. These are two of the names which glitter brightest in the rolls of fame, and Mr Alison is able thoroughly to appreciate each. Let us ask, in passing, what if these two heroes had changed times and places? Each was thrown on troubled and terrible times; each possessed great intellect, and resplendent military genius. Would Marlborough have played Wellington's, or he Marlborough's part, on the scene of moral and political action? As far as the illustrious living† hero is concerned, the question admits of an instant answer.

† The Duke of Wellington died on the 14th of September (1852), ensuing the February in which this paper was written.

We have now, however, the character of Marlborough fairly delivered into the hands of Mr Alison, to be dealt with according to truth and honour. Will he concur with Mr Hallam and Mr Macaulay? If he do, Marlborough must, we suppose, be henceforth regarded as a sort of splendid fiend—reveling in his defiance of the precepts of honour, morality, and religion: prostituting transcendent powers for the basest purposes, and exhibiting the vices of our nature in colossal proportions. —Can Mr Alison vindicate his hero against the sorrowful censures of his noble brother historian? No: he does not attempt it. On the contrary, he is even more emphatic in denouncing the faithlessness of Marlborough than Lord Mahon; placing his treachery to James II., “in a moral point of view,” even deeper in infamy than that of Marshal Ney. “And yet,” says he, “such is often the inequality of crimes and punishments in this world, that Churchill was raised to the pinnacle of greatness by the very treachery which consigned Ney, with justice, so far as his conduct is concerned, to an ignominious death. History forgets its first and noblest duty when it fails, by its distribution of praise and blame, to counterbalance, as far as its verdict can, this inequality, which, for inscrutable, but doubtless wise purposes, Providence has permitted, in this transient scene. Charity forbids us to scrutinise such conduct too closely.”* This is conceived in a spirit at once generous and just; and the acknowledgment thus early and pointedly, of Marlborough’s great fault, is marked by signal discretion, such as is likely to carry the reader cheerfully along with his author, and induce a hearty concurrence in his ultimate conclusion. We rejoice, then, that Marlborough has fallen into such hands; and shall proceed, as briefly as is consistent with our space, and the importance of the subject—for it is of importance, and great importance, too, and Mr Alison’s is a *timely* biography, as we shall soon show—to give such an account of the contents of these two volumes as will, unless we are mis-

taken, induce our readers to become his.

There are four reasons why we regard Mr Alison’s new work as specially well-timed; and we believe that our readers will, without difficulty, concur in these reasons. First, a full, fair, and popular biography, personal, political, and military, of the great Duke of Marlborough, has recently become a matter of mere justice, because of the blighting denunciations of his conduct and character which Mr Macaulay has so recently exhibited in his widely circulated volumes, and is doubtless at this moment engaged, *totis viribus*, in enhancing. Secondly, because a great store of invaluable materials for such a biography is in existence, the principal portion having only recently become so, continuing, however, in a state which renders the whole but a sealed book to the public at large. Thirdly, Mr Alison is peculiarly qualified to deal with this state of things, by his unbiassed faithfulness, and the multifarious qualifications which he has acquired in the preparation of his *magnum opus*, the “History of Europe during the French Revolution.” Lastly, because of the course of public events, now daily becoming the source of greater anxiety to those who look beneath the surface, and would apply effectually the experience of the past, in order to comprehend our present position, and provide against our dark and—as to some eyes it may appear—blood-red future. Let us recur for a moment to the second of these reasons, in order to give the reader a just idea of his obligations to Mr Alison. He may be said to have sunk shafts into five mines. First, the “Marlborough Despatches,” which had lain buried in an unaccountable manner till the month of October 1842, when they were accidentally discovered, under a mass of old military accounts, and other waste paper, by Mr Whateley, the solicitor of the present Duke of Marlborough. In the lumber-room of a house for a long series of years used as the steward’s residence, there lay, one upon another, three large boxes; and it was in the undermost

* ALISON’S *Marlborough*, vol. i. pp. 16, 17, 18.

one that Mr Whateley made the fortunate discovery, with which his name will ever be deservedly associated, of eighteen folio books, bound in vellum—*inestimable documents!* “being,” says that gentleman, “manuscript copies of despatches and letters of John Duke of Marlborough, in English, French, and some few in Latin,”—extending over the resplendent *decennium* from 1702–1712. These had been, to that moment, totally unknown to any one living; and, what is exceedingly singular, had also escaped the watchful and anxious eye of Archdeacon Coxe, the author of the compendious, elaborate, and authentic “Life” of the great Duke. These precious documents were placed in the hands of an eminent and accomplished military authority, the late Sir George Murray, who published at intervals, beginning in 1845, a selection from the “Despatches,” in five large octavo volumes, ably edited, with copious historical and military notes. As Mr Alison has remarked, Sir George’s “Marlborough Despatches” constitute a work of inestimable importance to the historian, and also to the military reader; but they will rarely, if ever, be opened by the general reader. We ourselves have turned from its pages, more than once, hopelessly, with yet a feeling that they contained matter of great interest and importance to a competent and determined military or historical reader. This is Mr Alison’s first and richest mine, sunk in his own country. In quest of another he crosses the Channel, and there encounters the “Military Life of Marlborough,” in three volumes, written in France in 1807, at the instance of his mighty admirer, Napoleon: * “towards the composition of which,” says Sir George Murray, every facility of information was afforded which the power of the Emperor could command.” This Mr Alison pro-

nounces “the best military narrative of the Duke’s exploits which has yet appeared.” But Mr Alison is indebted to France for another grand source of authentic information on “the Continental side of the great wars waged by Marlborough”—General *Pelot’s* Collection of original Memoirs and Despatches, published in nine quarto volumes, and entitled, “*Mémoires Militaire relatifs à la Succession d’Espagne.*” Again, we have the *Dutch* account of this ever-memorable war, published at the Hague in 1721—the “magnificent work” of *Rousset*, in three volumes folio. And yet again, *Kausler’s* “admirable summary of great battles, collected from the best authorities, and annexed to his splendid military Atlas.” To these must be added, Archdeacon Coxe’s “Life,” in three volumes quarto—“the most authentic and valuable which exists,” founded on a close examination of all the correspondence known to be in existence at the time; but liable to a serious drawback—that “it is long and expensive, and too full of long documents, and letters, *in the text.*” What are all these works, exclaims the embarrassed general reader, to me—having neither time, nor inclination, nor means for mastering them? You might as well place a man seeking for a richly-chased golden goblet in the midst of the Californian or Australian gold-fields, and point him with exultation to piles of sacks filled with the auriferous dust! Now Mr Alison has, in the two moderate-sized volumes before us, presented the impatient applicant with his desired goblet, and entitled himself thereby to due gratitude. He is scrupulous in owning his obligations, and also in enabling his reader at once, if disposed, to verify facts, and extend his inquiries, by placing at the end of every paragraph, as in his “History of Europe,” the authorities on which that paragraph is founded. To these are added a carefully prepared map of France and the Netherlands, “so arranged as to show the positions of every place, in strict accordance with the text;” and plans of the battles, accurately reduced from

* “Napoleon hummed the well-known air, *Malbrook s’en va-t-en guerre*, when he crossed the Niemen to commence the Russian campaign. The French nurses used to frighten their children with stories of *Malbrook!*—as the Orientals, when their horses start, say they see the shadow of Richard Cœur-de-Lion crossing their path.”—*Pref.*, iv. v.

the great German work of Kausler, "so well known from the splendour of its finishing, and the accuracy of its details." To all this we have yet to add, that Mr Alison appears also to have consulted every other work hitherto published, having reference to the personal or military life of his hero, and to be familiarly acquainted with everything of importance that has appeared, either contemporaneously or subsequently, concerning the part which the Duke of Marlborough took, or is supposed to have taken, in the momentous politics of the day.

We have taken the trouble of being thus particular, out of justice to Mr Alison; for without this detail, neither the value nor the extent of his labours could have been appreciated by the reader; who, if he share our fate, will be carried evenly and rapidly along, from the beginning to the end of these two eloquent volumes, charmed with the result, but never adverting to the laborious and praiseworthy process. And we repeat that all this is thoroughly *tanti*—as a matter of even justice to the sedulously-slandered illustrious dead, in this respect sharing the fate of a prophet, who is not without honour, *save in his own country*, (for abroad, Marlborough's memory is radiant with imperishable glory), and also because, as we have intimated, there is a portentous resemblance between Marlborough's time and our own. He was the great champion of Protestantism, in its tremendous encounter with Popery, of which Louis XIV. was the worthy and formidable exponent. "The siege of Lille," says Mr Alison, at the close of his first volume, "one of the most memorable and glorious of which there is any mention in history, like those of Troy and Carthage in ancient, and Malta and Jerusalem in modern times, was not merely the theatre of contest between rival powers, but of struggle between contending principles and rival faiths. The great contest between the Romish Church and the Reformation ultimately issued, as all such schisms in belief must issue, in a terrible war. Louis was the head

of the ancient, Marlborough the champion of the new, faith. The circumstance of the Spanish Succession was but an accident, which brought into the field forces on either side, previously arranged under these opposite banners. It was the great division of men's minds which drew them forth, in such strength, into the field of war."* Now let any *thinking* person of 1852 survey the existing attitudes of these fearful and implacable belligerents, as exhibited in their relations, both in this country and on the Continent, and in certain recently-developed political conditions, which they are rapidly moulding, and arranging with a view to action on a scale such as the world has perhaps never witnessed; and the "boldest may hold his breath for a time." He will at length, probably, ask, not without anxiety—Where are we to look for our Marlborough by-and-by? and perhaps he may add, with an indignant sigh, We would not treat him as our fathers treated theirs!

The romance of the "Life of Marlborough" begins with the very beginning of that life. He bursts upon us a beautiful boy, fascinating everybody by his charming manners—the little heir to the all but ruined fortunes of an ancient and loyal family, which, on the father's side, had come in with the Conqueror, while in his mother's veins ran the blood of the illustrious Sir Francis Drake. He had an only sister, who, a victim to the licentiousness of the times, became mistress of the future James II., the great patron of her brother, and to whom she bore a son: who, as Duke of Berwick, was destined, almost single-handed, to uphold the tottering throne of Louis XIV. against the terrible sword of her brother! That son, commanding the forces of France and Spain during the War of the Succession, almost counterbalanced, by his military genius, his uncle's victories in Germany and Flanders! Lord Bolingbroke said of his nephew, that "he was the *best* great man that ever

* Vol. i. pp. 447, 448.

existed"—and of the uncle, as we have seen, that "he was the perfection of genius matured by experience—the greatest general and greatest minister that our country, or any other, has produced." These two great personages were signalised by the same grand qualities of military genius, of humanity in war, of virtuous conduct in private life: would, however, we could say that the elder hero had no bar sinister on his moral, as the younger had on his heraldic, 'scutcheon! Forgetting, however, for a moment that solitary blot—would we could forget it for ever!—let us concur with Mr Alison in noting so singular and interesting a coincidence, that "England has equal cause to be proud of her victories, and her defeats, in that warfare; for they both were owing to the military genius of the same family, and that one of her own."* There was a difference of twenty years between them; and it is again singular, that each, at the same early age—fifteen, showed a sudden irrepressible ardour for arms, impelling them, at the same age, to quit the seductive splendour of the court of Charles II. for foreign service—the uncle, as a volunteer in the expedition to Tangiers, against the Moors; the nephew, twenty years afterwards, against the Turks, under Charles, Duke of Lorraine, in Hungary. It is indeed a most extraordinary fact, already adverted to, that, while the uncle all but subverted the throne of France by his Flemish campaigns, and but for infamous domestic faction would have done so, his nephew, single-handed, preserved that of Spain for the house of Bourbon! If this be the first step in this romance of reality, the next is one profoundly suggestive to a contemplative mind. We have spoken of a splendid *Decennium* in the Duke of Marlborough's campaigns, that from 1702 to 1712. But what a preceding *Quinquennium*, that from 1672 to 1677, have we here for a moment before us! The "handsome young Englishman," an idol among the profligate beauties of the

court of Charles II., had made at length a conquest of his celebrated and favourite mistress, the Countess of Castlemaine, afterwards Duchess of Cleveland. To remove so dangerous a rival in her fickle affections,† Charles gave him a company in the Guards, and then sent him to the Continent, *proh pudor!* to aid Louis XIV. in subduing the United Provinces. There he sedulously learnt the art of war under Louis's consummate generals, Turenne, Condé, and Vauban; thus acquiring, under Louis's own auspices, that masterly knowledge of the science of war, which was destined to be wielded so soon afterwards, with triumphant and destructive energy, against himself! How little was such a contingency dreamed of when Louis XIV. publicly, at the head of his army, thanked the handsome young hero for his services, and afterwards prevailed on his brother sovereign, Charles, to promote him to high command! And here is suggested the first of several deeply interesting and instructive parallels to be found in this work, between our own incomparable Wellington, and his illustrious predecessor: that Wellington went through the same practical course of study, but in inverse order—his first campaign being *against* the French in Flanders, and his next against the bastions of Tipoo, and the Mahratta horse in Hindostan.

Shortly after the youthful Churchill's return, occurred that event which is of great importance in the lives of

† It would seem that Charles II. would have surprised him, on one occasion, in the company of the Countess; but, to save her credit with the King, he leaped through the window at the risk of his life; in return for which she presented him with £5000. With reference to this latter part of the business may be noted a diversity between two of Marlborough's biographers. Archdeacon Coxe ludicrously attempts to explain this splendid present of £5000, on the ground of Churchill's being in some way *distantly related* to the Duchess. "If the reverend archdeacon," says Mr Alison—with a quaint approach to sarcasm very rare with him—"had been as well acquainted with women as he was with his books, he would have known that beautiful ladies do not, in general, bestow £5000 on distant cousins, whatever they may do on favourite lovers.

all men to whom it happens — marriage; but which to the young soldier was pregnant, for both good and evil, with immense influence upon the whole of his future career, and also upon his personal character. He married the beautiful lady in attendance on the Princess Anne, Miss Sarah Jennings, of spotless purity of character, and, like himself, of an ancient and ruined Royalist family. He was then in his twenty-eighth, she in her eighteenth year; and, to anticipate for a moment, after a fond union of forty-four years' duration, he died in his seventy-second year; she, twenty-two years afterwards, in her eighty-fourth!

Want of fortune for some time delayed their union, which, however, an enthusiastic declaration of his passion at length accelerated. She married, in the young and already celebrated general, a man of not only transcendent capacity, but gentle and generous feelings, and a magnanimity which displayed itself on a thousand trying occasions. Their hearts were passionately true to each other, through every moment of their protracted union and dazzling but chequered fortunes. Her fair fame was never, even in those days of impurity, tarnished by the momentary breath of slander. She possessed great talents, but was also of a haughty, ambitious temper, bent upon aggrandisement, and grievously avaricious; and to the ascendancy over her husband, which she maintained unabated from first to last, may perhaps be attributed the development of those features in his character which have excited the grief of honourable posterity, and afforded scope for the foulest misrepresentations of his conduct and motives to contemporary and succeeding traducers, rabid with the virus of political hostility. Though impatient to quit the topic, but only for the present, we shall here advert to Marlborough's inexcusable conduct towards James II., for the purpose of citing a passage in the Duchess's own Vindication, on which Mr Macaulay relies, as conclusively demonstrating the

mercenary motives influencing Marlborough. That passage, however, does not necessarily sustain the imputation made by Mr Macaulay, though it may justify a suspicion of the sort of motives which *she* might have been in the habit of urging on her confiding husband:—"It were evident to all the world that, as things were carried on by King James II., everybody, sooner or later, *must be ruined* who would not become a Roman Catholic. *This* consideration made me very well pleased at the Prince of Orange's undertaking to rescue me from such slavery."*

That Marlborough should be in high favour with William III. may be easily conceived; for he not only essentially facilitated the enterprise of that great man, but actively supported him in all those critical measures necessary to consolidate his power, and strengthen his novel and splendid position. He acquitted himself so admirably in the Netherlands in 1689, in Ireland in 1690, and again in Flanders in 1691, where he served under William himself, that he was on the way to almost unbounded power with William. But, behold, to the consternation of the whole country, almost immediately after his return with William, early in 1692, he was suddenly arrested and committed to the Tower, on a charge of high treason, in having entered into an association for bringing about the restoration of James II.! As the charge, however, could not be legally substantiated, and was indeed proved to have been supported by fabricated evidence,† he was liberated, but not restored for a considerable time to his former position, there being good reason for believing him, at all events, no stranger to a clandestine correspondence with the exiled family. Well, indeed, may Lord Mahon lament his "perseverance in these deplorable intrigues."‡ We concur with Mr Alison in his remark, that, with all the light subsequently thrown on Marlborough's history, upon this portion of it there still rests a grievous mystery. Within five

* MACAULAY, 256, note.

† ALISON, i. 22.

‡ MAHON, i. 21, 22.

years afterwards; however, he was completely re-instated in William's confidence; who in June 1698 positively intrusted his recently discarded servant with the all-important function of tutor to the young Duke of Gloucester, William's nephew, and heir-presumptive to the throne!—saying, on apprising him of the appointment, “My lord, *make my nephew to resemble yourself*, and he will be everything which I can desire!” When William's stern and guarded character is borne in mind, this transaction becomes exceedingly remarkable. Marlborough continued ever after to rise higher and higher in the confidence of his sovereign, who thrice named him one of the Lords Justiciars, to whom the administration of affairs in this country was intrusted during William's absence in Holland; and also appointed him, in 1701, ambassador-extraordinary at the Hague, and commander-in-chief of the allied forces in Flanders. This double appointment, observes Mr Alison, in effect invested Marlborough with the entire direction of affairs civil and military, so far as England was concerned, on the Continent. And even yet further, previously to his unexpected death shortly afterwards, William enjoined on his successor, the Princess Anne, that she should intrust Marlborough with the supreme direction of the affairs of the kingdom, both civil and military! Three days after her accession, accordingly, she made him a Knight of the Garter, Captain-general of the English forces at home and abroad, Master-general of the Ordnance, and Plenipotentiary at the Hague; Lady Marlborough, Mistress of the Robes, and Ranger of Windsor Forest; and her two daughters, Ladies of the Bed-chamber. He instantly went over to the Netherlands to assume the command of the allied army, sixty thousand strong, then lying before Nimeguen, threatened by a superior French force; and, after displaying infinite skill, succeeded in constructing that famous Alliance which was soon to work such wonders in Europe. Here commences the lustrous decen-

nium of which we have spoken; and, most fortunately, here also, as we have seen, commence the Despatches so recently recovered. Here he became invested with that unsullied and imperishable glory, which dazzled all eyes but those of his rancorous and inveterate detractors; who were probably influenced not only by venomous jealousy, the canker of little minds, but also, in no slight degree, by his having extinguished all their fond hopes of his co-operation in restoring the discarded Stuarts.

From this point Mr Alison starts brilliantly on his course of chequered and exciting narrative, military and political; revelling amidst marches, counter-marches, feints, surprises, stratagems, sieges, battles; intercalating vivid glimpses of domestic tenderness, grief, and joy; then the plots and counter-plots of tortuous faction and intrigue, in the senate, in the cabinet, and even in the palace. And with all this, the interest ever centres in one object—

“In shape and gesture proudly eminent,”

John Duke of Marlborough: not because the author appears to wish it, but because of his faithfulness. He has almost unconsciously exhibited his hero, equally whether off his guard or on his guard, manifesting the full power and intensity of a grand character impressing its will upon men and affairs, irresistibly, and in defiance of agencies capable of annihilating one only a single degree inferior to the energy which in Marlborough mastered everything, everybody. “To write the life of Marlborough,” said the late eloquent Professor Smyth of Cambridge,* “is to write the history of the reign of Queen Anne;” let us add—and also to write it in light. Mr Alison makes a similar observation in the preface to his present work. He intimates that Marlborough was so great that his Life runs into general history: exactly as he who undertakes to write the history of the French Re-

* *Lectures in Modern History*, delivered in the University of Cambridge (Lecture xxiii).

volution will soon find his narrative turn into the biographies of Wellington and Napoleon, so he who sets about the life of Marlborough will ere long find that he has insensibly become engaged in a general history of the War of the Succession. Well, be it so, if only because that war it is of importance to have better known than in fact it is.

If Mr Alison's object, in the work before us, were to produce a biography to delineate character, and so to group events as to illustrate individuality—he has eminently succeeded; but his very success renders it difficult for those in our position to allow him to speak for himself, as copiously as doubtless he, and also our readers, would wish. As he has mastered his subject, so have we mastered his treatment of it, as, at least, we suppose; and as he took his own course, so shall we; wishing that we could give our readers the pleasure which his book has afforded ourselves. In order, however, to attain that object, they must read the book itself; and to induce them to do so, we proceed to indicate its leading characteristics in our own words, using his own, as far as is consistent with our space and our object.

To appreciate the mighty doings of Marlborough, let us glance for a moment at the position in which he found, and the position in which he left, the redoubtable Louis XIV.—him whose memory is for ever rendered detestable by his revocation of the Edict of Nantes, and his bloody exterminating persecution of the Protestants. Marlborough found him the centre of a galaxy of glory, of almost every description of military, political, and intellectual distinction. He was blazing in the zenith of his power and success: he was making France the world, and installing the Roman Catholic religion in a black and bloody predominance. "Unbroken good fortune," says Mr Alison, "had attended all his enterprises, since he had launched into the career of foreign aggrandisement." But how did Marlborough leave him? Let the dying monarch speak for him-

self. When he felt death approaching, he ordered his infant heir, afterwards Louis XV., to be brought to his bedside; and placing his lean and withered hand * on the head of the child, said with a firm voice,—“My child, you are about to become a great king; but your happiness will depend on your submission to God, and on the care which you take of your subjects. To attain that, you must avoid, as much as you can, engaging in wars, which are the ruin of the people: do not follow in that respect the bad example which I have given you. I have often engaged in wars from levity, and continued in them from vanity. Do not imitate me, but become a pacific prince.” Thus he had learned, at last, a great lesson through the tremendous teaching of Marlborough!†

That great man seems to have fathomed the character and the purposes of Louis, in all their depth and comprehensiveness, from the first, with an intuitive sagacity; and the patient determination with which he carried out, under circumstances of unparalleled difficulty, his own great conceptions, exhibits perhaps the grandest spectacle to which history can point in the case of a single individual. The reader of these volumes will frequently swell with indignation at the obstacles which were thrown in the way of Marlborough, by envy, faction, selfishness, and with a stupidity interposing, with a fell punctuality, at almost every great crisis during his career, and blighting the most splendid prospects of success. One only a little inferior in magnanimity to Marlborough would have broken down on many different occasions, and fled

* ALISON, vol. ii. p. 300.

† “Even the great William,” says Professor Smyth, “trained up amid a life of difficulties and war, with an intrepid heart and a sound understanding, was able only to stay the enterprises of Louis; successfully to resist, but not to humble him. It was for Marlborough to teach that unprincipled monarch the danger of ambition, and the instability of human grandeur; it was for Marlborough to disturb his dreams of pleasure and of pride, by filling them with spectres of terror and images of desolation.” The lecture from which this is taken is well worthy of a careful perusal.

from the scene of action in disgust and despair. With him, however, it was not so; and yet he was a man of keen sensibility, and has left on record various traces of heart-wrung anguish. Here are one or two, among many scattered over these volumes:—"The unreasonable opposition I have met with has so heated my blood that I am almost mad."—"I am, at this moment, *ten years* older than I was four days ago!"—"My spirits are so broke, that, whenever I can get from this employment, I must live quietly, or die."—"My crosses make my life a burthen to me." All this while, nevertheless, the great warrior-statesman was steadily, yet rapidly, demolishing the vast fabric of French power and glory, and building up in massive proportions that of his own country. "More, perhaps, than any other man," justly observes Mr Alison, at the close of his work, "Marlborough was the architect of England's greatness; for he at once established on a solid basis the Protestant succession, which secured its religious freedom, and vanquished the formidable enemy which threatened its national independence. His mighty arm bequeathed to his country the honour and the happiness of the eighteenth century—the happiest period, by the admission of all historians, which has dawned upon the world since that of the Antonines in ancient story."*

Let us now take a hasty view of his radiant career, remembering the while that he ever bore about with him that which hung like a millstone round his neck—his indefensible conduct towards James II., the recollection of which must have galled and chafed the sensitive spirit of a soldier, infinitely more than was known to any human being.

Mr Alison opens with an imposing picture of the state of public affairs, both in this country and on the Continent, when Marlborough commenced his campaigns; and also delineates with truth and force the characters of the leading actors, all remarkable personages. Louis XIV. stands foremost, and is sketched with freedom and

* ALISON, vol. ii. p. 347.

power.† Then come James II., William III., Queen Anne, Charles XII., Prince Eugene, and, last of all, Marlborough, who, at the close of his first campaign, was regarded both at home and abroad as "*The Man of Destiny*," raised up by Providence to rescue the Protestant religion and the liberties of Europe from the thralldom of France."‡ It is, indeed, impossible to conceive any conjuncture of circumstances more critical and perilous than those of this country at the period in question. Not only our religion, but our independence as a nation, and the very existence of social order, were at stake. If one may use such an expression, the odds were immensely against us—against all who were opposed to the giant energy of Louis XIV. The first step to be taken was to form an alliance against him—and it was undertaken by Marlborough with consummate ability; then to induce the British Cabinet to take its right place as "*the very soul of the Grand Alliance*"—in that, also, he at length succeeded; and then came the trumpet-sound of war against France, which was forthwith proclaimed at London, the Hague, and Vienna. Yet still a practical difficulty remained, and one of peculiar delicacy: for the post of commander-in-chief of the allied forces was greatly coveted by several powerful candidates. Marlborough's own sovereign, Queen Anne, so strongly supported one of them, Prince George of Denmark, her husband, that she even protested she would not declare war unless he was appointed. The Dutch government, however, were resolute on behalf of Marlborough, as the only man equal to sustain the tremendous responsibility; and thus Marlborough became invested with the chief direction, both civil and military, of the forces of the coalition. It was not

† In Sir James Stephen's *Lectures on the History of France*, just published, there is an admirable and elaborate portraiture of Louis XIV. If the rest of the work is equal to this portion, which is all that we have as yet been able to examine, Cambridge has cause to congratulate herself on the accession of so accomplished and able a professor of modern history.

‡ ALISON, vol. i. p. 108.

difficult to foresee the interminable anxieties and vexations which were in store for him, derived from the jealousies and jarring interests of the various states, their ministers and generals, who were under the guidance of Marlborough.

The plan of operations on the part of Marlborough and Louis XIV. respectively, was as follows:—

“A German army, under Louis, Margrave of Baden, was to be collected on the Upper Rhine, to threaten France from the side of Alsace; a second corps, 25,000 strong, composed of Prussian troops from the Palatinate, and Dutch under the Prince of Sarbruck, was to undertake the siege of Kaiserworth; the main army, under the orders of the Earl of Athlone, 35,000 strong, was destined to cover the frontier of Holland from the Rhine to the Meuse, and at the same time cover the siege of Kaiserworth; a fourth body of 10,000, under Cohorn, the celebrated engineer, was collected near the mouth of the Scheldt, and threatened the district of Bruges.

“The preparations on the part of the French were not less vigorous; and from the more concentrated position of their troops, and unity of action among their commanders, they, in the first instance, were enabled to bring a preponderating force into the field. On the Lower Rhine, a force, under the Marquis Bedmar and the Count de la Motte, were stationed opposite to Cohorn, to protect the western Netherlands from insult; Marshal Tallard was detached from the Upper Rhine, with 13,000 men, to interrupt the siege of Kaiserworth; while the main army, under the command nominally of the Duke of Burgundy, really of Marshal Boufflers, a veteran and experienced officer, was stationed in the bishopric of Liege, resting on the strong fortresses with which that district of Flanders abounded. Not only were the forces under his command superior by a third to those that Athlone had at his disposal, the latter being 45,000, the former only 35,000 strong, but they had the immense advantage of being in possession of the whole strong places of Bra-

bant and Flanders, which were all garrisoned by French or Spanish troops, forming not only the best and most secure possible basis for offensive operations, but an iron defensive barrier, requiring to be cut through in successive campaigns, and at an enormous expenditure of blood and treasure, before by any road the frontiers of France could be reached.”*

Such as it was, however, says Mr Alison, the barrier required to be cut through; and Marlborough resolved to commence it with the siege of Kaiserworth, a place of great importance. He took it—but at a cost of 5000 men; and then took Venloo—and finally Liege—all places of extreme importance, and desperately defended; and with these feats he concluded the brief but brilliant campaign which laid the foundation of all his future victories. It stripped the French of many of the chief advantages with which they had opened the war. He had broken through their line, so formidable for offensive and defensive war; he had “thrust his iron gauntlet,” says Mr Alison, “into the centre of their resources.” And the entire merit was his own, as Lord Athlone, his rival and second in command, thus nobly testified:—“The success of the campaign is entirely owing to its incomparable commander-in-chief; for I, the second in command, was on every occasion of an opposite opinion to that which he adopted!” His success was like a bright burst of sunshine over a long troubled land! But here an incident occurred which might have ruined all. While dropping down the Meuse, on his return to England, at the conclusion of the campaign, he was positively taken prisoner by a small French force,—whose commander, however, ignorant of the prize which was within his reach, and skilfully misled by a sagacious device of Marlborough’s servant, suffered him to depart! The peril in which he had been, spread consternation everywhere, equalled only by joy at his escape, which was powerfully expressed to him by the Pensionary Heinsius. “Your captivity was on the

* ALISON, vol. i. p. 92-3.

point of causing the slavery of these provinces, and restoring to France the power of extending her uncontrollable dominion over all Europe. No hope remained, if she had retained in bondage the man whom we revere as the instrument of Providence to restore independence to the greater part of the Christian world!" On what apparently trivial incidents often depend the greatest events that can happen to mankind! Marlborough was received with transports in England, and raised to the dukedom of Marlborough. The difficulties which the Dutch deputies had thrown in his way during the first campaign, owing, says Mr Alison, to timidity, ignorance of the military art, personal presumption, and the spirit of party, on several great occasions thwarted the most decisive measures of Marlborough, — but proved only a foretaste of what was in store for the harassed commander. Mr Alison gives an interesting letter which Marlborough wrote to his countess, immediately on his arrival at the Hague. It is full of the passionate fondness of a lover to his mistress; yet was written by a man of fifty-two to a wife to whom he had been married twenty-three years! There are innumerable other instances in these volumes, of the romantic fervour of their attachment.

Such was Marlborough's first campaign, the herald of a long series of resplendent successes, many of them marked by features similar to those of the first. "He never," indeed, "fought a battle which he did not gain, nor sat down before a town which he did not take; and alone of the great commanders recorded in history, *never sustained a reverse!* On many occasions throughout the war he was prevented, only by the timidity of the Dutch deputies, or the feeble co-operation of the allied powers, from gaining early and decisive success; and as it was, he broke the power of the Grand Monarque, and if his hands had not in the end been tied up by an intrigue at home, he would have planted the British standards on Montmartre, and anticipated the triumphs of Blucher and Welling-

ton." Here is the key to his position, from first to last—an inkling of the tortures which wrung that great soul throughout his career.

In this first campaign, Marlborough had laid the basis of great operations—which, indeed, followed in such rapid succession, each eclipsing its predecessor in magnitude of result and splendour of achievement, as to throw its foregoer comparatively into the shade. In order to appreciate the greatness of Marlborough, his position, harassed as he was daily by the jealousies and selfishness of the allied forces, which he commanded, should be compared with that of Louis XIV., where all was an overwhelming *unity* of will and purpose, perfect subordination, accompanied by immense military resources and consummate generalship. The war had, indeed, become already one of awful magnitude; for Louis XIV. and his advisers could not have failed to observe the settled determination of purpose, and forecastingsagacity, which characterised their mighty opponent. Louis brought all his power and resources to bear upon the plan of a second and magnificent campaign; showing that he felt the gravity of the situation, and the necessity of making commensurate efforts. "The great genius of Louis XIV. in strategy," says Mr Alison, "here shone forth in full lustre. Instead of confining the war to one of forts and sieges in Flanders and Italy, he resolved to throw the bulk of his forces at once into Bavaria, and operate against Austria from the heart of Germany, by pouring down the valley of the Danube. * * * The genius of Louis," he adds, after a lucid explanation of the projected campaign, which was indeed grandly conceived, "had outstripped the march of time; and the year 1703 promised the triumphs which were realised on the same ground, and by following the same plan, by Napoleon in 1805." * It was all, however, in vain, though his plans were carried into execution with infinite skill and energy. Marlborough got intelligence of them; and instantly conceived a masterly counter-plan, which, but for

* ALISON, vol. i. p. 125.

his being thwarted, as usual, by the Dutch deputies, would have been completely successful in the first instance. The resources which Marlborough's genius displayed in this transcendent campaign were prodigious. His rapidity of perception, his far-sighted sagacity, his watchful circumspection, his prompt energy, at length triumphed over all obstacles, and culminated in the glorious battle of Blenheim, than which none more splendid stands on record. The fearful consequences of failure were eagerly pressed upon him by his own officers. "I know the danger," said he calmly, "yet a battle is absolutely necessary; and I rely on the bravery and discipline of the troops, which will make amends for our disadvantages." * Mr Alison's description of this battle is equally brilliant and impressive, and we wish we could transfer it entire into our columns. It was a fearful day for Louis XIV. The total loss of the French and Bavarians, including those who deserted during the calamitous retreat through the Black Forest, was 40,000—"a number greater than any subsequently lost by France till the still more disastrous day of Waterloo." "The decisive blow struck at Blenheim resounded through every part of Europe. It at once destroyed the vast fabric of power which it had taken Louis XIV., aided by the genius of Turenne and Vauban, so long to construct. Instead of proudly descending the valley of the Danube, and threatening Vienna, as did Napoleon in 1805 and 1809, the French were driven in the utmost disorder across the Rhine. Thus, by the operation of one single campaign, was Bavaria crushed, Austria saved, and Germany delivered, * * * and the Empire, delivered from invasion, was preparing to carry its victorious arms into the very heart of France! Such achievements require no comment. They speak for themselves, and deservedly place Marlborough in the highest rank of military commanders. The campaigns of Napoleon exhibit no more decisive or important results." † His reception at the courts of Berlin and Hanover was like

that of a sovereign prince; and, on his return home, the nation welcomed him with ecstasy. The honour and manor of Woodstock were settled upon him; and the erection of the palace of Blenheim was commenced on a magnificent scale. Before the opening of this campaign he lost his only surviving son, in his seventeenth year—an event which occasioned him a week's paroxysm of grief. Shortly before, two of his daughters, very beautiful women, were married respectively to the Earl of Bridgewater and Lord Monthermer, whose father was subsequently raised to the rank of Duke of Montague. Another daughter had been married to Lord Sunderland, who occasioned the Duke of Marlborough intense mortification, by suddenly opposing his policy in the House of Lords. And, indeed, he seems to have suffered exquisitely during this period, from the animosities with which he was assailed at home by the Tories. He sought permission from the Queen to resign, and retire into private life; and it was only on her sending him a holograph letter, couched in terms of unusual affection, that he was induced to abstain from a step which would have been so fatal to the fortunes of his country. ‡ It was in this campaign that Marlborough and Prince Eugene came together—the latter a man of great military genius, and of chivalrously noble and generous character. The intimacy and co-operation of such a man must have cheered the spirit of Marlborough in many a dark hour of trial, difficulty, and danger. They never had a difference during all the campaigns in which they acted together. "The records of human achievements can present few, if any, greater men; but beyond all question they can exhibit none in whom so pure and generous a friendship existed, alike unbroken by the selfishness consequent on adverse, and the jealousies springing from prosperous fortune."

From this period the affairs of perplexed and convulsed Europe may be said to have rested upon the Atlantean shoulders of this marvellous man. The impression left on one's mind,

* ALISON, i. 159.

† Ibid. 187.

‡ Ibid. 141.

after reading these volumes, is that of wonder how human faculties could sustain, and for such a length of time, so vast and constantly increasing a pressure, alike upon his heart and his intellect. Never, perhaps, was greatness so perseveringly harassed by littleness. He may have exclaimed on a thousand occasions—

"The times are out of joint! O cursed spite,
That ever I was born to set them right!"

There is something at once exciting and oppressive in the following vivid picture:—

"No adequate idea can be formed of the greatness of Marlborough's capacity, or the overwhelming load of cares with which he was oppressed, if the other contests which, in addition to his own, he was obliged to carry on, are not taken into consideration. It was not merely his own campaigns, often of the most active kind, which he was called on to direct; he was at the same time charged with the almost entire direction of those in every other quarter, and constantly appealed to whenever a difficulty occurred. At the very moment when his blood was heated by combat, and he was obliged to be ten or twelve hours a-day on horseback with his own troops, he was compelled to steal half the night to carry on his multiplied correspondence with the allied generals or cabinets in every part of Europe. Such was the weight of his authority, the avidity for his direction, that not only was he intrusted with the general design of every campaign, alike in Germany, Italy, Spain, and Flanders, but the details of their execution were constantly submitted to him; and, what was much more vexatious, he was continually called on to adjust by his authority, or heal by his urbanity, the quarrels of the generals, and discord of the cabinets to whom their direction was intrusted. His correspondence affords ample evidence of this. Appeals were made to Marlborough at every time, and from every side: from the Imperial ministers against the inactivity of the Margrave of Baden; from the Margrave against the

imbecility of the Imperial cabinet; from Lord Peterborough against the jealousy and tardiness of the Spaniards at the court of the Archduke Charles; from them against the irritability and eccentricity of the English general; from the Hungarian insurgents against the exactions and cruelty of the Imperial government; from them against the restless and rebellious spirit with which the Magyars in every age have been animated.

"The confidence universally reposed, not only in his wisdom and justice, but in his conciliatory manners and irresistible address, was the cause of this extraordinary load of important cares with which, in addition to the direction of his own army, he was daily overwhelmed. From Eugene alone he was assailed by no appeals, except for such addition to his forces as might put him in a condition to measure his strength with the enemy. Their ideas were so identical, their minds so entirely cast in the same mould, their military knowledge and capacity so much alike, that it invariably happened that what the one of his own accord *did*, was precisely what the other of his own accord would *have recommended*. Nor was it enough that foreign affairs of such overwhelming magnitude daily oppressed the English general; he had in addition the divisions of the cabinet at home to heal, and the deadly animosity of faction, increasing with every triumph which he won, to appease. No warrior of modern times, not even excepting Wellington, had such a mass of affairs, both civil and military, to conduct at the same time, and none ever got through them with such consummate ability. The correspondence of the Emperor Napoleon alone, since the days of Cæsar, will bear a comparison with it; but although nothing could exceed the energy and capacity of the French emperor, there was this difference, and it was a vital one, between his position and that of Marlborough—Napoleon commanded, after he attained to greatness, everywhere as a master: he directed his generals with equal authority on the

Danube and the Tagus, and dictated to cabinets at Vienna or St Petersburg nearly as effectively as at St Cloud; but Marlborough had not even the uncontrolled direction of his own army, and beyond it had no influence but what had been extorted by exploits or won by condescension."

The great event of this third campaign was the battle of Ramilies, where Marlborough was within a hair's-breadth of being taken prisoner on the field, and had to fight his way out from his throng of assailants, like the knights of old, sword in hand. No sooner had he succeeded in this, than he had another escape—his horse fell in leaping a ditch; and his equerry's head was carried off by a cannon-ball while holding the Duke's stirrup as he mounted another.* This was a very great battle, and attended by signal results—the acquisition of *nearly all Austrian Flanders!* What now was the position of Louis XIV.? "After five years of continued effort, he found himself stripped of all his conquests, shorn of his external influence, and compelled to maintain at once on the frontiers of Germany, Flanders, Spain, and Italy, a contest, from his own resources, with the forces of all Europe. * * * His haughty spirit, long accustomed to prosperity, supported with difficulty the weight of adversity. The war, and all its concerns, was a forbidden subject at court. A melancholy gloom pervaded the halls of Versailles; and frequent bleedings of the monarch himself attested both the violence of his internal agitation and the dread which his physicians entertained of still greater dangers. Overcome by so many calamities, the fierce spirit of Louis was at length shaken, and he was prevailed on *to sue for peace!*"† After the battle of Ramilies, Marlborough was offered the government of the Netherlands, the emoluments of which were no less than £60,000 a-year; but he magnanimously refused it, from a regard to the public good, and on every subsequent offer of the same splendid and lucrative post, did

the same. Ought he not to receive full credit for this noble disinterestedness?

On his return to England he met with a rapturous reception; was thanked by parliament; £5000 a-year was settled on him and his duchess, with their descendants; and the dukedom extended to *heirs female*, "in order," as it was finally expressed, "that England might never be without a title which might recall the remembrance of so much glory."‡ Equally indefatigable at home as abroad, in peace as in war, he addressed himself at once to his parliamentary duties, and took a leading part in the great and beneficial measure for uniting Scotland with England. His vast influence in the country, and at court, however, excited intense jealousy among both Whigs and Tories.

The ensuing campaign (A.D. 1707) found Louis XIV. "reduced on all sides to his own resources," and thoroughly awakened from his dream of foreign conquests: seeking only, and that with anxiety and alarm, to defend his own frontier. Here, however, two new actors appear on the chequered scene,—the Duke of Marlborough's nephew, the Duke of Berwick, who by his great victory of Almanza counteracted in Spain his uncle's efforts; and Charles XII. of Sweden, a "new and formidable actor on the theatre of affairs in Germany." Louis XIV. made desperate efforts to win over Charles XII., but the exquisite adroitness of Marlborough frustrated them altogether. Louis, however, encouraged by the gleams of success which had been visible in Spain and elsewhere, made immense efforts to recover his lost ground. Marlborough's energies were equally divided between delicate and perilous negotiations with the various European potentates, and another decisive campaign in the field. Both he and Louis made prodigious exertions, and at length were on the point of fighting another great battle; "and, by a most extraordinary coincidence, the two armies were of the same strength,

* ALISON, i. 247.

† Ibid. 277, 278.

‡ Ibid. 287.

and occupied the same ground, as did those of Napoleon and Wellington a hundred and eight years afterwards!" Marlborough was eager for the fight, confident of a great victory; but, at the eleventh hour, a panic seized his old friends the Dutch deputies, and they compelled him to retire to his former position, and decline the encounter, to his maddening mortification. The enemy, showing no disposition to encounter him, at length retreated, Marlborough advancing, but finding it impossible to bring on a general action. Both armies were led into winter quarters, and Marlborough repaired to England, "where his presence had become indispensably necessary for arresting the progress of public discontent, fanned as it was by court and parliamentary intrigues, and threatening to prove immediately fatal to his own influence and ascendancy, as well as to the best interests of England."*

Here we are plunged into the vortex of political intrigues,—the principal actors being Harley and St John and Mrs Masham on the one side, and on the other the Duke and Duchess of Marlborough, whose ascendancy over the Queen and the country, and even their own party the Whigs, is perceived giving way, and that rapidly. Mr Alison here shows his dispassionate character to great advantage, holding the balance evenly between all parties. His candid and luminous statement is equally interesting and instructive; and one point he brings out in a very striking manner, though not in so many words: we mean the retributive justice with which the Duke's treachery to James II. was brought home to himself, and also to the Duchess—the latter being utterly incredulous of the ingratitude and treachery of Mrs Masham towards her, and the former equally so in the case of Harley and St John. How often and how bitterly may such reflections have occurred to the Duke and Duchess!

Their position at court had become exceedingly trying; but their

* ALISON, i. 330.

treatment of the Queen was highly imprudent, the Duke being doubtless greatly influenced by his imperious and intractable Duchess. Mr Alison regards her as the "faithful representative of the whole Whig party," whose "arrogant domination and grasping disposition were the real causes of their fall from power, and the total change in the foreign policy of England—results not attributable exclusively to female partiality, or a bedchamber intrigue; which were, nevertheless, the ultimate *agents* in the change, and apparently its immediate precursors. The Whigs were haunted as incessantly by dread of a reaction, as the Jacobins of France of a counter-revolution; and apprehended from a change of ministry not merely the total subversion of their party, but serious personal consequences, in respect of the part which had been played to James II." Such is the general conclusion arrived at by Mr Alison—indicative, undoubtedly, of his candour and moderation.

Early in 1708, and while Marlborough was placed in these critical circumstances, occurred the attempt of Louis XIV. to imitate, in some respect, the example of his allied opponents, by invading Great Britain, in order to place the Pretender on the throne. Louis's terrible antagonist, however, Marlborough, was here again to confront him. As commander-in-chief, the Duke crushed the attempt; and the ambitious Chevalier was forced to creep back to Dunkirk ridiculously—the only result being suddenly to reinstate Marlborough at the summit of popularity, and to silence all slanderous imputations upon his fidelity to the cause of the Revolution.

The precarious position of political matters in England at this crisis was profoundly appreciated by Marlborough, who said that any considerable reverse on the Continent, or even a campaign as nugatory as the last, would, probably, not only dissolve the Grand Alliance, and undo all that had been done, but place a new administration in power, and possibly seat another dynasty on the throne. He

also surveyed, with unerring sagacity and accuracy, the whole position and probable intentions and plans of Louis XIV.; whom he saw preparing for yet one more grand demonstration of force. Marlborough took his plans accordingly; and on the 12th April 1708, in concert with the incomparable Eugene, arranged the plan of operations. He resolved to use the precious opportunity yet available, before the accession of the Tory ministry, for the purpose of striking a tremendous blow. And he did what he purposed; for this campaign was signalised by most resplendent results, glorious to Marlborough almost beyond parallel, and equally disastrous to Louis XIV. Bring what forces, indeed, the latter might into the field—array them under what consummate generals he pleased, and let him select his site, and mature his plan of operations as he chose—all was, as usual, in vain, before the grand genius of Marlborough! Vendôme was here the military mentor of Louis; and he succeeded in surprising Ghent and Bruges into a surrender, greatly to the vexation of Marlborough. But the latter instantly resolved on a scheme as masterly as it proved successful. He resolved to throw himself on his opponent's communication; and, by interposing between him and the French frontier, compel him to fight with his face towards Paris, and his back to Antwerp. This manoeuvre was executed with a rapidity commensurate with its importance—and thus Vendôme's skilful plans were entirely disconcerted. He moved off precipitately, followed by Marlborough, who resolved to force him to a decisive action, and succeeded—adding OUDENARDE to his other laurels. This was indeed a fearful affair. Both parties fought with desperation—Vendôme with eighty-five thousand men, Marlborough with eighty thousand. Nothing, however, could resist his generalship and valour; and Vendôme was defeated, with a loss, including deserters, of fully twenty thousand men. "If I had had two hours more of daylight," said Marlborough, "the French

army would have been irretrievably routed, great part of it killed or taken, and the war terminated on that day." The results of this sanguinary and splendid battle were immense; entirely altering the character and fate of the campaign. By his admirable movement in interposing between Vendôme and France, Marlborough had gained the incalculable advantage of throwing his opponent, in the event of defeat, into a corner of Flanders, and so leaving exposed the French frontier, and all its great fortresses. Marlborough's eagle eye, perceiving the capabilities of his new position, he resolved to discard all minor objects, pass the whole fortified towns on the frontier, and advance direct on the capital. This daring but prudent design, says Mr Alison, was precisely that of Wellington and Blücher a century afterwards; but Marlborough was overruled—Eugene for once concurring in regarding it as too hazardous; and it was resolved to commence the invasion of the territories of the Grand Monarque, by laying siege to the inestimably important frontier fortress of LILLE, the strongest place in French Flanders, and which would give the Allies a solid footing, a commanding position, in the territories of Louis. The undertaking, however, was most formidable—"for not only was the place itself, the masterpiece of Vauban, of great strength, but the citadel within its walls was still stronger; and, moreover, it was garrisoned by the celebrated Marshal Boufflers, with fifteen thousand choice troops, and every requisite for a vigorous defence."* Besides all this, Vendôme and the Duke of Berwick, at the head of more than a hundred thousand men, lay in an impregnable camp, covered by the canal of Bruges, completely fortified, between Ghent and Bruges, ready to interrupt or raise the siege. But, as usual, we must ask, of what avail? Marlborough sate down before Lille, and it fell. To avert that event, Vendôme and Berwick led forth their magnificent army, a hundred and ten

* ALISON, i. 406.

thousand men, preceded by two hundred pieces of cannon, in the finest order, to within a quarter of a league of Marlborough—"everybody expecting the greatest battle, on the morrow, which Europe had ever seen."* Thus grandly they advanced; but as ridiculously retired without firing a shot! Marlborough, however, was of a different humour, and resolved to follow and fight them; and the Duke of Berwick himself has told us what the issue would have been—that "Marlborough would have utterly routed his enemy, and probably finished the war that day." But—the accursed Dutch deputies again! They interposed, and Marlborough's heart nearly burst, as he beheld the foe retire unmolested. "If Cæsar or Alexander," said Eugene, "had had the Dutch deputies by their side, their conquests would have been less rapid."† The siege went on—a ball striking Eugene on the head, and wounding him severely, whereby the whole burthen of directing and sustaining the vast operations fell on Marlborough alone till Eugene's recovery. After sixty days' siege, Boufflers was compelled to capitulate, being treated nobly by his captors. Still the citadel remained—but that also fell; and with it the strongest frontier fortress of France, under the eyes of its best generals and most powerful army! This was a siege perhaps the most memorable, and also one of the most bloody, in modern Europe,—standing forth, as Mr Alison elsewhere remarks, in solitary and unapproachable grandeur in European warfare. The Allies were now within reach of the very heart of France; and Louis XIV. was trembling in his halls at Versailles.‡ Before Marlborough would close his campaign, however, he recovered Ghent and Bruges.

Such was the campaign of 1708, one of the most glorious in the military annals of England, and one in which the enormous capacity of the English general shone forth with perhaps the brightest lustre. The strife

of opinion, the war of independence, were alike brought to an issue in that memorable contest, and as far as military success could do it, to a glorious termination. "But at this moment," says Mr Alison, with a sigh, "faction stepped in to thwart the efforts of patriotism; and his subsequent life is but a record of the efforts of selfish ambition to wrest from the hero the laurels, from the nation the fruits, of victory."§

When the laurelled victor returned to England, he received no favour from the Queen, and was treated with studied coldness at court! Faction and intrigue had been and were then busy at their foul work. This was doubtless hard to bear; but what was the situation of the great Louis? His fortunes were desperate; his exchequer was beggared; the land was filled with lamentation; and the horrors of famine were superadded. Then Louis supplicated for peace to those whom he had so long striven to crush and annihilate: a bitter humiliation! And in his extremity he bethought himself of bribing his great conqueror; offering him, directly, no less a sum than nearly a quarter of a million sterling, as the price of his influence for the purpose of obtaining terms advantageous to France. It need not be said that the attempt was scornfully repulsed. The triumphant Allies insisted on terms of compromise which Marlborough himself with noble disinterestedness condemned, and Louis could do nothing but repudiate. Once again, therefore, he took the field with an enormous army of 112,000 men, under his renowned marshal, Villars; and all France was animated, at this momentous crisis, by the conviction that then "it behoved every Frenchman to conquer or die." Marlborough commenced the campaign with 110,000 men; and immense results were looked for, from "the contest of two armies of such magnitude, headed by such leaders, and when the patriotic ardour of the French nation, now raised to the uttermost, was matched against the military strength of the

* ALISON, i. 419.

† Ibid. 423.

‡ Ibid. 448.

§ Ibid. 448.

Confederates, matured by a series of victories so long and brilliant." So confident was Villars in the strength of his army, and his intrenched position, that he sent a trumpeter to the Allies' headquarters, to announce that "they would find him behind his lines; or, if they were afraid to attack, he would level them, to give entrance!" With consummate prudence Marlborough declined the invitation, and besieged Tournay—which he took, after a siege of almost unequalled horrors; but he gained by it a fertile and valuable province in French Flanders. Then he determined to take Mons, the next great fortress on the direct road to Paris; but for this it would be necessary to break through Villars' long lines of defence. By a dexterous movement, he succeeded in turning these formidable lines, thirty leagues in length, the results of two months' severe labour, and the subject of such vainglorious boasting by their constructor! They were now rendered utterly useless; and this prodigious feat had been accomplished easily, and without bloodshed. Then came another terrible battle—that of MALPLAQUET, in which Marlborough, with 93,000 men, after the most bloody and obstinately contested contest that had occurred in the war, defeated an army of 95,000,—the noblest which the French monarchy had ever sent forth—strongly posted between two woods—trebly intrenched! "It was," says Mr Alison, "a desperate duel between France and England, in which the whole strength of each nation was put forth. Nothing like it had occurred since Agincourt, nor afterwards occurred till Waterloo." Both Villars and Bouffiers performed prodigies of strategy and valour; but of what avail against Marlborough? Then he laid siege to, and took Mons: after which there remained only two more fortresses between the Allies and Paris! These glorious operations, however, formed the subject of only vexatious insults, and paltry and presumptuous criticism, to his malignant enemies in England, with a view to lower his overwhelming influence at

home. He was disgusted and disheartened, and went so far as to say to the Queen, with natural but imprudent indignation—"After all I have done, it has not been able to protect me against the malice of a bed-chamber woman!"

The affairs of the Allies becoming exceedingly critical, Marlborough, after strenuous but futile efforts at negotiation, was forced again to take the field; and projected operations on a grander scale than ever, with a view to promptly closing the war. Again he succeeded in passing immensely strong lines of defence without shot or bloodshed, and sat down before Douai, another fortress of the utmost importance, in every way, to France. Villars received imperative instructions from the alarmed court at Versailles to raise the siege at all hazards; and, at the head of a splendid army of upwards of 90,000 men, most ably generalled, approached, "with all the pomp and circumstance of war," to within musket-shot of Marlborough's position—around whose bayonets, however, played the lustre of Blenheim and Ramillies. Villars advanced—to retire without firing a shot, though his army greatly outnumbered that of Marlborough! Of course, he took Douai, after a bloody siege; and then Bethune, after thirty days of open trenches; where, says the *French* annalist, "Vauban beat the *chamade*—the sad signal which terminated all the sieges undertaken by Marlborough!" It had to sound twice more in that campaign—on the fall of St Venant and of Aire after severe sieges; and the trembling Louis, disarrayed of four great frontier fortresses in one campaign, now placed all his hopes on the result of base intrigues, in England, against Marlborough and the war ministry. "What we lose in Flanders," said his triumphant minister, Torcy, "we shall gain in England!" And there, indeed, his enemies were doing their work with the utmost skill and determination, in order to secure his speedy downfall, and the advent of a ministry which should surrender all that had been gained

in the war, humble England before France, and seal the fate of Protestantism and the Succession which upheld it. Their scandalous doings almost wore out Marlborough, making him, as he said, "every minute wish to be a hermit." He nobly resolved, however, harassed and thwarted as he was, to retain his command, "as affording the only security for a good peace, and the Protestant succession to the throne." His enemies in England were this time successful—the Whig ministry fell; and thus ended Marlborough's career as a statesman. And to such a deplorable depth could national meanness sink, that attempts were actually made to inveigle him into *personal* liability for the expense of prosecuting the works at Blenheim, till then carried on by the Treasury! He was received enthusiastically by the people; but neither the Queen nor the Parliament thanked him for his services and sacrifices. Mr Alison at this point presents us with a dazzling summary of these services:—

"This, therefore, is a convenient period for casting the eyes back on what he had done during the ten years that he had been the real head of the Alliance; and marvellous beyond all example is the retrospect! He began the war on the Waal and the Meuse, with the French standards waving in sight of the Dutch frontier, and the government of the Hague trembling for the fate of their frontier fortress, Nimeguen. He had now brought the allied ensigns to the Scarpe, conquered Flanders, subdued all its fortresses, and nearly worked through the iron frontier of France itself. Nothing was wanting but the subjugation of its *last* fortress, Arras, to enable the Allies to march to Paris, and dictate a glorious peace in the halls of Versailles. He had defeated the French in four pitched battles and as many combats; he had taken every town to which he had laid siege; he had held together, when often about to separate, the discordant elements of the Grand Alliance. By his daring march to Bavaria, and victory of Blen-

heim, he had delivered Germany when in the utmost danger; by the succours he sent to Eugene, he had conquered Italy at Turin; by his prudent dispositions he had saved Spain, after the battle of Almanza. He had broken the power of Louis XIV. when at the zenith of his fame; he had been prevented only by faction at home from completing his overthrow by the capture of his capital. He had never suffered a reverse; he had never alienated a friend; he had conquered by his mildness many enemies. Such deeds require no comment; they are without a parallel in European history, and justly place Marlborough in the place assigned him by Napoleon—at the head of European captains."

The overthrow of Marlborough effected an object quite unlooked for by his eager and short-sighted enemies. The efforts of faction, aided by a palace intrigue, showed what had been due to the greatness of one man. Instantly, as if by enchantment, the fabric of victory raised by his all-potent arm was dissolved. Spain was lost, Flanders reconquered, Germany threatened! The arch of the Grand Alliance fell to pieces:—lamentable results, showing in brighter colours than ever the greatness and patriotism of Marlborough. Again he took the command of the Hague, though no longer possessing the confidence of the government, and intrusted with no control over diplomatic measures; and once again dazzled Europe, and petrified his enemies, by the splendour of his very first achievement. Louis, in order to prevent the irruption of his foes into France, now that almost all his fortresses had been broken through, resolved on the construction of a line of defence on a scale so stupendous as to attract universal wonder—lines subsequently paralleled only by those prodigious ones of Torres Vedras. They were supplied with abundance of cannon, and manned by ninety thousand choice troops of infantry and cavalry under the command of Villars, who might at length reasonably imagine himself both impregnable and unconquerable.

Marlborough was then in his sixty-second year, almost worn out by long service, intense anxieties, and incessant mortifications. "I find myself decay so very fast," he wrote to his Duchess, "that from my heart and soul I wish the Queen and my country a peace, by which I might have the advantage of having a little quiet, which is my greatest ambition."* But his mighty powers addressed themselves once more to a commensurate object—the devising an enterprise which should at a stroke deprive his enemy of all his huge defences, and drive him to fight a decisive battle, or lose his last frontier fortress. Shortly afterwards, he was confounded by Prince Eugene being withdrawn from him, together with a large section of the army, to repair disasters, in a distant part of the Continent. This of course rendered Villars suddenly anxious for an encounter; but Louis, his eyes intently fixed on the progress of intrigues in London, had peremptorily prohibited him from fighting. Villars vaingloriously styled his lines "Marlborough's *ne plus ultra*," a subject on which he was abundantly jocular. But Marlborough, having carefully studied them, devised a plan which very soon silenced his boasts, and plunged him into consternation. We must refer our readers to Mr Alison's exciting description of this feat of strategy, by which Marlborough passed his imaginary "*ne plus ultra*" without having fired a shot, without having lost one man—frustrating, by a sudden march, nine months' labour, and suddenly exhibiting to Marshal Villars the palsy spectacle of Marlborough's whole army drawn up in battle array on the *inner* side of the impregnable lines! All this was the work of Marlborough alone. The military critics of the Continent were at a loss for words adequately expressing their admiration of this vast exploit:—

"Marlborough's manœuvre," says Rousset, "covered him with glory: it was a duel in which the English beat the French general; the armies on

either side were present only to render the spectacle more magnificent. In battles and sieges, fortune and the valour of soldiers have often a great share in success; but here everything was the work of the Duke of Marlborough. To gain the lines, they would willingly have compounded for the loss of several thousand lives: thanks to the Duke, they were won without the loss of one; that bloodless victory was entirely owing to his wisdom."†

Marlborough instantly besieged Bouchain, another great fortress, having prevented Villars, by brilliant manœuvring, from coming to its assistance. "The works effecting that purpose," said a Hanoverian officer engaged on the occasion, "were worthy of Julius Cæsar or Alexander Farnese, and the siege one of the prodigies of war. You could not fire a cannon-shot from the trenches without Villars seeing its smoke. He omitted nothing which could suspend or interrupt the works. Vain hope! Our general, invincible on all sides, has foreseen and frustrated all his enterprises."‡ Marlborough was then pressing on the siege of Quesnoy, the capture of which would have completely broken through the French barrier; when, alas! he suddenly found himself undermined by the intrigues secretly carrying on between the Tories and Louis XIV.; preliminaries of peace were signed between them, afterwards embodied in the execrable Treaty of Utrecht—abandoning the main object of the long, glorious, and successful war—the exclusion of the Bourbon family from the throne of Spain. And what, thinks the reader, was done by Marlborough's enemies, in order to anticipate and frustrate his opposition to these base proceedings? He was ridiculed and libelled everywhere in the bitterest terms; accused of avarice, fraud, extortion; of indolence, cruelty, ambition, and misconduct: even his courage was questioned; and he was denounced as the lowest of mankind! His magnificent passage of the French

* ALISON, ii. 185, note.

† Ibid. 184.

‡ Ibid. 199, 200.

lines was ridiculed as "the crossing of the kennel;" and the siege of Bouchain stigmatised as an inexorable sacrifice of sixteen thousand men for "the capture of a dovecot!"* He was charged with having embezzled £63,319 of the public money during the war in Flanders! and Parliamentary commissioners were employed to investigate the charge, which the contemptuous and indignant warrior in one moment blew into the air. Then he was accused of having prolonged the war for his own pecuniary interests; and finally, he was charged with other pecuniary peculations to an immense amount; and the Queen, on the advice of her infamous ministers, dismissed her illustrious servant from all his employments, in order that the atrocious calumnies might be investigated.

The intelligence of these execrable proceedings was received with transport by the enemies of England abroad; and Louis XIV. exclaimed rapturously, "*The dismissal of Marlborough will do all we can desire.*"† At that moment the fallen warrior-statesman's resplendent services had reduced Louis to a state of desperation, and he, with his whole kingdom, lay at the mercy of Marlborough. Louis had announced his resolve to lead the last army he could muster in person, and conquer or die; but the measures of the ministry averted the direful alternative, and saved his throne at the instant of its becoming defenceless. The perfidious defection of England from the Grand Alliance, paralysed it. England consummated her treachery and dishonour by the peace of Utrecht; which Mr Pitt justly stigmatised as "the indelible reproach of the age," and which entailed on England long-continuing disaster. As for Marlborough, almost every conceivable kind of insult and provocation was heaped upon him; scurrilous mercenaries haunted him with libel and ridicule; and to complete the climax of national meanness, the Treasury payments for the works at Blenheim were discontinued, and the contractors

and workmen stimulated to sue the Duke for the arrears due to them, to the extent of £30,000; while a peer, in his place in Parliament, actually charged the veteran hero—John Duke of Marlborough—in his presence, with "having led his troops to certain destruction, in order to *profit by the sale of the officers' commissions*!‡ The Duke deigned no reply, but on leaving the house condescended to notice his slanderer by a challenge, which the terrified peer instantly communicated to the proper quarter; and the Queen's interference saved him from trembling at twelve paces' distance, before John Duke of Marlborough. To escape the torturing indignities and outrages to which he was exposed, he obtained passports and went abroad.

The Duke of Marlborough was welcomed on the Continent with almost the honours due to a crowned head. At Antwerp his arrival and departure were signalised by triple discharges of artillery; the governor received him outside the walls with obsequious respect; deafening acclamations resounded from the multitude as he passed through the streets, every one struggling to catch a glimpse of dishonoured greatness. "All," says Mr Alison, "were struck with his noble air and demeanour, softened, though not weakened, by the approach of age. They declared that his appearance was not less overpowering than his sword. Many burst into tears when they recollected what he had been, and what he was, and how unaccountably the great nation to which he belonged had fallen from the height of glory to such degradation." What pangs must have wrung the heart of the illustrious veteran at such a moment! "Yet was his manner so courteous, and yet animated, his conversation so simple, and yet cheerful, that it was commonly said at the time, 'that the only things he had forgotten were his own deeds, and the only things he remembered were the misfortunes of others.'"

During his absence, his infamous traducers redoubled their efforts to secure his ruin. The terror of his name,

* ALISON, ii. 203.

† Ibid. 213.

‡ *Parl. Hist.* vi. 1137.

the shadow of his distant greatness, must, however, frequently have made themselves felt, if only with the effect of blinding them to the folly of their own machinations. Their calumnious charges were annihilated by him from abroad, the moment they reached him; and those who had prepared such charges, ignominiously silenced by his clear and decisive refutations. But Blenheim was within the power of a magnanimous people, and they caused the erection of it, at the public cost, to be suspended! The principal creditors sued the Duke personally for what was due to them; and ultimately Blenheim, "this noble pile, this proud monument of a nation's gratitude," would have remained a ruin to this day, but for the Duke's own private contribution of no less a sum than £60,000! One's cheek tingles with shame at the recital; but there stands the humiliating fact!

Pudet hæc opprobia nobis,
Et dici potuisse, et non potuisse repelli.

The Duke of Marlborough spent nearly two years on the Continent. Having quitted England on the 30th October 1712, he returned on the 4th August 1714; but under what circumstances? In the full splendour of the romance of history. In contact with Marlborough, every event seems to swell into great proportions, as if owning the presence and power of greatness.

While abroad, his commanding intellect engaged itself in the noblest of causes—upholding the interests of civil and religious liberty, which were bound up indissolubly with the Hanoverian succession. He might have retired for ever from the world, in stern disgust at the treatment which he had experienced; but his magnanimity would not suffer him. He knew that civil despotism and the triumph of the Romish faith were identified with the success of Louis. The restoration of the Stuart line was the symbol of the triumph of Popery; and Marlborough continued anxiously to watch the progress of public events, with reference to that "consummation" so "devoutly" to be deprecated. The two years

referred to were those of an immeasurably momentous crisis, big with the ultimate destinies of this country. Marlborough was, throughout that crisis, as clear-sighted, resolute, energetic, and skilful in securing the Protestant succession, as he had ever been in the conduct of his wars, every one of which had direct reference to that high and glorious object. He continued the very life and soul of the good cause, which he advanced by incessant watchfulness and discreet and energetic action; carrying on a constant correspondence with his friends both at home and abroad. At length Bolingbroke reached the summit of advancement, and became virtually prime minister. Bent upon the restoration of the Stuarts, in two days' time he had organised a thoroughly Jacobite cabinet, which would unquestionably have proceeded to seat the Stuarts on the throne. But the awful hand of God appeared suddenly in the ordering of events: "The angel of death," to use Mr Alison's words, "defeated the whole objects for which the ministers were labouring so anxiously, and for which they had sacrificed the security and glory of their country." Civil war was almost in the act of breaking out, when the Queen died; having at the last moment taken a step, in nominating the Duke of Shrewsbury to be Lord Treasurer, which annihilated the guilty hopes of Bolingbroke and his party. This was the last act of her life; and on her death the Protestant party took prompt and vigorous measures. George I. was instantly proclaimed king, and in three days' time the great Marlborough reappeared on the scene, the very guardian angel of the newly proclaimed king. His enemies were struck with consternation. "*We are all frightened out of our wits upon the Duke of Marlborough's going to England,*"* wrote one of them to Bolingbroke. The illustrious personage was welcomed with enthusiasm similar to that with which he had been formerly familiar; an immense concourse of citizens attended him into the city, shouting—"Long live George I.!

* ALISON, ii. 263, note.

Long live the Duke of Marlborough!" He was at once sworn in of the Privy Council, and visited by the foreign ministers and all the nobility and gentry within reach, and in the evening appeared in the House of Lords, and took the oaths of allegiance and supremacy, his old companions in arms, the Grenadier Guards, firing a *feu-de-joie* on the auspicious occasion. That day effaced the traces of years of injustice. The death of a single individual"—the weak, ungrateful, vacillating Anne—"had restored the patriotic hero to the position in which he stood after the battle of Blenheim!" Though he had resolved to take part no more in the conduct of affairs, he was prevailed upon to resume his post of commander-in-chief, in which great capacity his new sovereign received him with extraordinary demonstrations of satisfaction, "proud to do honour to the chief *under whom he himself had gained his first honours on the field of Oudenarde!*" * The discomfited Jacobites, Bolingbroke, Ormond, and Oxford, were impeached for high treason, for their conduct in seeking to overturn the Act of Settlement, and restore the Stuarts. The former two fled to France, but Oxford remained, and was prosecuted, but acquitted. Here again the character of Marlborough has been maligned, by the charge of having done all in his power to thwart the prosecution, for fear of Lord Oxford's revealing the correspondence of the Duke in early life, after the Revolution. This slander, however, is decisively refuted by two facts—that of the Duke's *hostile vote in every stage of the prosecution!* and by the still more decisive fact, that he was found to have been specially exempted from the proffered amnesty, published by the Pretender, when he landed in Scotland.† This last event—the Rebellion in Scotland—must have been, indeed, as Mr Alison remarks, a sore trial to Marlborough—"more severe than any he had experienced since James II. had been precipitated from the throne; for here was the son of his early patron and bene-

* ALISON, ii. 266.

† Ibid. 303.

factor asserting in arms his right to the throne of his fathers!" But the Duke was here true as steel to his principles; and his energy and sagacity extinguished the formidable insurrection, and with it the hopes of the Stuarts. The Pretender returned humbled and ruined to the Continent, in time to witness the death of the monarch Louis XIV., whose guilty ambition had lighted the terrible conflagration, of which a spark had been thus kindled in this country, and which he had lived to see extinguished by such torrents of blood. He was then seventy-seven years of age, miserable in contemplating the widespread misery and ruin which he had prostituted all his greatness in order to effect, and shuddering at the recollection of his share in the revocation of the Edict of Nantes. His death-bed reflections and injunctions to his successor we have already laid before the reader.‡

Only a few months previously, Louis's great conqueror had received two startling messages, telling him, in heart-breaking tones, of the transient nothingness of life. His two lovely daughters, the Countess of Bridgewater and the Countess of Sunderland, were cut off in the flower of their beauty, by almost sudden deaths, within a few days of each other. These events pierced him to the heart. Two years afterwards, having, during the interval, experienced various warnings, he was struck with palsy, which deprived him for a time of both speech and resolution. He recovered sufficiently, in a few months' time, to be capable of removal to the country, for the benefit of change of air and of scene. He visited Blenheim; and on going through such of the rooms as were finished, was shown a picture of himself at the battle of Blenheim. He turned away with a mournful air, saying only, but in memorable and significant words, "Something *then!*—but *now!*" §

He continued, on earnest solicitation, to hold his high military office, and discharge its duties, for five years;

‡ *Ante*, 133.

§ ALISON, ii. 305.

living also in the tranquil enjoyment of domestic happiness, superintending the education of his grandchildren, and taking special delight in the rising architectural grandeur of Blenheim, down even to the period of his death. He made his last appearance in the House of Lords, on the 27th November 1721; but in June following had a severe and fatal attack of paralysis. It at once prostrated his physical without impairing his mental powers. To a question of his Duchess, whether he heard the prayers which were being read as usual at night in his apartment, he replied, "Yes; and I joined in them!" These were the last words of this great man, who expired calmly a few hours subsequently, in the seventy-second year of his age. He who thus joined in prayers* on his death-bed had, with solemn reverence, joined in them on the eves of Blenheim and of Malplaquet with his whole army; and, amidst all the bloody horrors of war, had, in like manner, remembered his God on every occasion, joining precept with example in a noble spirit of piety. Let us hope that the prayers of the dying warrior were heard and accepted by Him who heareth prayer; and that he quitted life in a spirit different from that of Peter the Great, who said on his death-bed, "I trust that, *in respect of the good I have striven to do my people*, God will pardon my sins!"† Mr Alison charitably "hopes that these words have been realised;" but it is surprising that he did not sorrowfully indicate the fatal fallaciousness of Peter's reliance.

Marlborough's funeral obsequies were celebrated with extraordinary magnificence, and all ranks and all parties joined in doing him honour. On the sides of the car bearing the coffin,

* Marlborough had received the sacrament, with great solemnity, in the midnight preceding the battle of Blenheim; and shortly before, divine service had been performed at the head of every regiment and squadron in the allied army. After the battle he said, that "he had prayed to God more frequently during its continuance, than all the chaplains of both armies put together, which served under his orders."—ALISON, i. 166.

† Ibid. ii. 100.

shields were affixed containing emblematic representations of his battles and sieges. Blenheim was there, and the Schellemburg, Ramilies, Oudenarde, and Malplaquet; Ruremonde and Liege, Menin and Dendermonde, Antwerp and Brussels, Ostend and Ghent, Tournay and Lille, Mons and Bouchain, Bethune, St Venant, and Aire. "The number, and the recollections with which they were fraught, made the English ashamed of the manner in which they had used the hero who had filled the world with his renown."‡

Thus lived, and thus died, and thus was buried, John Duke of Marlborough; of whom Lord Mahon § takes leave in a strain of solemnity and dignity befitting the occasion:—

"England lost one of her noblest worthies in John Duke of Marlborough. His achievements do not fall within my limits, and his character seems rather to belong to the historians of another period. Let them endeavour to delineate his vast and various abilities: that genius which saw humbled before it the proudest mareschals of France; that serenity of temper which enabled him patiently to bear, and, bearing, to overcome, all the obstinacy of the Dutch deputies, all the slowness of the German generals; those powers of combination, so provident of failure, and so careful of details, that it might almost be said of him, that before he gave any battle he had already won it. Let them describe him in council as in arms, not always righteous in his end, but ever mighty in his means!"

There was grandeur in the words with which the Garter-king-at-arms closed the ceremonial at the tomb:—"Thus it has pleased Almighty God to take out of this transitory world, into his mercy, the most high, mighty, noble prince, John Duke of Marlborough."||

‡ Ibid. 307.

§ *History of England*, ii. 41, 42.

|| On Thursday the 18th November 1852, occurred the ever-memorable obsequies of the illustrious Duke of Wellington; obsequies the grandeur of which never was, nor can ever be, surpassed, if even equalled, in

He has passed to his great account, and must stand hereafter before the Searcher of hearts, to give an account of the deeds done in the body, and be judged accordingly.

It becomes us, short-sighted and fallible as we are, to deal cautiously and tenderly with the memory of the illustrious departed. There may have been palliating circumstances in the case of Marlborough's desertion of James which have never yet been taken into account, and which now, probably, never will. Could we hear his own explanation of his conduct towards James, that explanation might change our estimate of his fault, or at least mitigate the asperity of our censures. No one, as the case now stands, can be wicked enough to justify Marlborough's conduct towards James, in remaining in his service, apparently devoted to his interests—those of one of the most confiding masters whom man ever had—after irrevocably committing himself to that master's enemy, and effectually securing the downfall and destruction of one who had actually saved the life of his treacher-

this country. He was buried at St Paul's. The day was one of almost religious observance throughout the kingdom. The author, who witnessed the funeral, immediately after quitting the cathedral, thus recorded his impressions, which he hopes the reader will receive indulgently:—

"We have buried our dead out of our sight, and Wellington is sleeping by the side of Nelson. How unspeakably precious are these two jewels of the national honour, safe in the sacred keeping of our venerable cathedral! Who will henceforth pass that hallowed structure without a thrill of fond pride and enthusiasm? Where in the wide world sleep two greater warriors—and both Englishmen? Who have turned their vast warlike capacities to nobler purposes, and conferred more extended and enduring benefits upon society by their skill, prowess, and patriotism? Yes, we have just buried our Wellington—that is, all that was mortal of him. In the sublime accents chanted over his dust, and still echoing in our ears—'His body is buried in peace, but his name liveth evermore.' And how? As the image and representative of as pure, exalted, and grand a character as ever distinguished one of the human species. And his obsequies were most magnificently celebrated: in a manner which must have perfectly satisfied even his exacting and idolising countrymen. Everything that taste, love, veneration, and the resources of this great nation could contribute, combined to

ous servant, and showered upon him every possible mark of affection and distinction. That Marlborough was conscientiously attached to the cause of Protestantism while he thus acted, we have no doubt whatever; nor that he cherished that attachment to the last moment of his life, and respected it as the star by which he steered throughout his career. We must remember that he had done everything in his power to divert James from his purpose of re-establishing Popery. "My places, and the king's favour," said he, in 1687, "I set at nought, in comparison of being true to my religion. In all things but this the king may command me: and I call God to witness that even with joy I should expose my life in his service, so sensible am I of his favours—I being resolved, though I cannot live the life of a saint, if there be occasion for it, to live the life of a martyr." This he said to William, then Prince of Orange. And during the same year he had thus sternly addressed James himself, when remonstrating with him for "paving the way for the introduction of Pop-

characterise the proud and mournful ceremony which has only just terminated. Europe sent her greatest heroes to pay reverential homage to our departed mighty one; and they testified by their presence that Arthur Duke of Wellington, Prince of Waterloo, was felt to have been the saviour of Europe. When before has Garter-king-at-arms declared such a gorgeous list of titles? When will he declare such an astonishing list again—and in the presence of so illustrious an assemblage of the royal, noble, and great ones of our own and foreign lands? He has left us full of years—"life draining out clear to the last drop"—full of honours—and entombed in the nation's heart of hearts. She has done what she could, and is now anxiously, but not despondingly, looking round among her surviving sons to see if she can find those worthy to tread in his steps, though they may not be able to fill his giant foot-prints, and keep pace with his mighty strides; hoping still, however, that they may follow in the same direction, by keeping their eyes steadily fixed, as he did, on the triple stars of duty, truth, and honour. The queen has lost, indeed, a prince and a great man from among her people, and her royal heart is, perhaps, at this moment throbbing, as her consort tells her, in faltering tones, of the sublime spectacle which he has been witnessing, and the tears which he let fall as the chief royal mourner by the grave of Arthur Duke of Wellington."

ery." He spoke with great warmth, and thus — "What I spoke, sir, proceeded from my zeal for your Majesty's service, which I prefer above all things, next to that of God; and I humbly beseech your Majesty to believe that no subject in the three kingdoms will venture farther than I will, to purchase your favour and good liking. But as I have been bred a Protestant, and intend to live and die in that communion, and as above nine out of ten in England are of that persuasion, I fear, from the genius of the people, and their natural aversion to the Roman Catholic worship, some consequences which I dare not so much as name, and which I cannot contemplate without horror."* That he said this to his infatuated master is indisputable; but it was his duty to have at once quitted the service of that master, on finding that he could not conscientiously continue in it. "Had he done so," says Mr Alison, "and then either taken no part in the revolution, or never appeared in arms against him, the most scrupulous moralist could have discovered nothing reprehensible in his conduct." That course Marlborough, alas! did not take; and that which he did, must have entailed upon his sensitive mind unspeakable misery and mortification throughout life. He must also have foreseen the blot which that conduct would fix for ever on his fair fame—a reflection dimming the splendour of his greatest triumphs, and wringing his heart in its proudest moments of justifiable exultation. When we reflect upon his long and illustrious course of public service, the spotless purity of his private conduct in all the relations of life, as husband, father, friend; his uniform piety, his humanity, generosity, magnanimity, under the most trying circumstances in which man can be placed, we are filled with as much wonder as lamentation at this instance of treachery, this temporary oblivion of all sense of honour and loyalty. But has it not been heavily punished, and has it not been atoned for?

* ALISON, i. 14, 15, note.

The charge, however, of a far more damning character than that of his conduct towards the Stuarts—that of having prolonged the war for his own selfish and even pecuniary ends—is annihilated, after having been reiterated with almost fiendish malignity and perseverance. Mr Alison has placed this matter in the clearest possible light, and accumulated such an overwhelming mass of disproof, that it seems monstrous that any such charge should have been for a moment entertained by even his most rancorous enemies. It now appears, from his correspondence throughout the war, that he pined and languished for its close, in order that he might cease to be the butt of malevolence and calumny, and escape from the crushing pressure of his thankless toils and responsibilities, into the repose of private life. Out of a great number of similar passages which we had marked for quotation, here is one both eloquent and affecting. He is writing to the Duchess from Flanders in 1705, and alluding to the calumnies against himself, which were reported to him from England. "This vile enormous faction of theirs vexes me so much, that I hope the Queen will after this campaign *allow me to retire*, and end my days in praying for her prosperity and making my peace with God."† He repeatedly supplicated to be allowed to resign his command, and only the injunctions of his sovereign, and the importunities of his friends and of the Allies prevailed upon him to persevere. He made the most desperate efforts to bring the war to a speedy close, but also a *safe* one; for he never lost sight for a moment of the great objects with which it had been undertaken. He saw distinctly, from first to last, that there was no real peace for Europe, no guarantee for our own independence, and for our civil and religious liberties, but the complete prostration of the ambition and power of Louis XIV.; and if his own enlightened sagacity had not been repeatedly thwarted by the stupidity or faction of those with whom he had to deal, he would early have deprived his traducers

† Ibid. 211, note.

of even the faintest pretext for their imputations upon him.

"I have had to modify my opinion of Marlborough," said the late eloquent Professor Smyth,* "since considering the lately published 'Life' of Archdeacon Coxe. I can no longer consider him as so betrayed by a spirit of personal ambition as I had once suspected, and I have a still stronger impression of his amiable nature in domestic life. The *great* Duke of Marlborough has been always his proper appellation, and he is made greater only by being made more known, by the publication of Mr Coxe; nor can it be doubted that he would appear greater still, the more the difficulties with which he was surrounded, on all occasions, could be appreciated." This is said in a candid and honourable spirit, by a professor whose sacred duty was to give true notions of history, and of the characters figuring in it, to the students of a great university. "These difficulties," continues the professor, "may now be partly estimated; the impetuous temper and consequent imprudence of a wife, whom for her beauty, her talents, and her affection, he naturally idolised; the low, narrow mind, and mulish nature, of the Queen he served; the unreasonable wishes and strange prejudices of the men of influence in his own country; the discordant interests and passions of different states and princes on the Continent; the pertinacity of the field-deputies of Holland, whom he could not send over into the camp of the enemy, their more proper station, and to whose absurdities it gave him the headache to listen." This pithy paragraph well groups together the leading "difficulties" with which this amazing man had to contend; and in Mr Alison's volumes a flood of light is thrown upon them all. None of his readers can fail to feel the profoundest sympathy with harassed greatness. Without compromising his own sense of what is right, or attempting to conceal or disguise the failings of his hero, Mr Alison has painted a picture, at once noble and affecting, of the Duke of Marlborough, in every aspect of his

character, in every position, with one woeful exception, in which he was placed. In private and in public life, as a friend, as a father, as a husband, as a diplomatist, as a statesman, as a warrior—where is his equal to be found, and how can we be too grateful to one who has placed him, in all these characters, so vividly before us? "If the preceding pages," says Mr Alison modestly, at the close of his biography, "shall contribute in any degree to the illustration of so great a character, and to shed the light of historic truth on the actions of one of the most illustrious men whom the world has ever produced, the author's labours will not have been incurred in vain." They have not; nor do we doubt that these volumes will add greatly to the well-earned reputation of the historian of Europe during the French Revolution. We repeat, that the knowledge gained by him, in preparing that work, has given him peculiar qualifications for writing the present. We had marked a great number of instances in which Marlborough's campaigns, and the events which led to them and followed them, are plenteously and instructively compared and contrasted with those of the great campaigns of Wellington and Napoleon. The resemblance is sometimes really wonderful; but the length to which this article has run, compels us to rest satisfied with referring the reader to the present work. The last chapter consists of five deeply-interesting portraits—Marlborough, Eugene, Frederick the Great, Napoleon, and Wellington—the five great generals of modern times. Their distinctive features are sketched with fidelity and force. It is, however, in the full flow of his military narrative that the peculiar excellence of Mr Alison is to be found. His battles † are al-

† A happy idea is embodied in a work recently published, and which has since passed through several editions—Mr Creasy's *Fifteen Decisive Battles of the World, from Marathon to Waterloo*. The idea was suggested by a remark of Mr Hallam, placed on the title-page, by way of motto: "These few battles, of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes." Mr Alison frequently puts such cases, in both *The Life of Mari-*

* *Lectures*, i. 143.

ways dashed off boldly and brilliantly, as far as effect is concerned, and at the same time with the most exact attention to details.

We are not disposed to be critical with an author who has afforded us such great gratification.

borough and his *History of Europe*. Mr Creasy, as a distinguished scholar and a professor of history, has acquitted himself very ably. His fifteen battles are well selected, as radiating centres of enduring influence upon human affairs in their greatest crises—as consequently imitating so many *nuclei* of historical knowledge.

Ubi plura nitent—non ego paucis
Offendar maculis, quas aut incuria fudit,
Aut humana parum cavit natura !

There are, however, occasional traces of haste, involving repetitions and confused expressions, which, doubtless, will disappear in future editions, such as doubtless will be called for ; and we are happy to have had this opportunity of calling attention to a new work proceeding from a gentleman standing so deservedly high with the public, and for which, moreover, he possesses several special qualifications.

THE PARADISE IN THE PACIFIC.

It was a chosen plot of fertile land,
 Amongst wide waves set like a little nest,
 As if it had, by Nature's cunning hand
 Been choicely picked out from all the rest,
 And laid forth for ensample of the best.

*Fairie Queen.**

WHERE IS IT?

THIS is the glorious FIRST OF JUNE!—and it is set like a gem in the centre of the London season. Oh, mighty, multitudinous London, how thou art enjoying thyself! All thy bravery is on, all thy misery is hidden; and here are youth, beauty, age, wisdom, valour, genius, loyalty, all surrounding Queen Victoria, giving them enchanting reception, dispensing regal hospitalities—ay, not to her own loving subjects alone, but to the representatives of all the great potentates and people of the earth; for, vast as is her empire, she is† at peace with all the world. 'Tis often said, and it has become splendidly stereotyped in English phraseology, that the sun never sets on her empire; and the Queen, much as her anxieties are occupied with north, south, east, and west, had recent reason to muse, not unpleasantly, on a certain little speck in the Southern Pacific Ocean, where she is specially loved, and where, after their humble fashion, they celebrate her natal day with flag fluttering gaily, and bell-ringing, and singing and dancing—the only day, it seems, in the year, in which Terpsichore can find time from her other engagements to show her merry face and foot, with feathery touch, for a moment—and, hark! the boom of a gun, forsooth, all on the same day,

and to glorify the same occasion! But what a gun! In the language of the inhabitants of this little paradise, of which we are about to speak, that gun “for fifty-five years had been deposited at the bottom of the sea, on a bed of coral, guiltless of blood, during the time so many thousands of mankind became in Europe food for cannon!” Her Majesty, amidst all the splendours which surround her, may hear with pleasure how her royal name was used at a certain tiny speck in the Pacific Ocean, with all the aforesaid splendid accompaniments, on Tuesday the 24th of May 1853:—

“The Queen! the Queen! our gracious Queen!
 Come, raise on high your voices,
 And let it by your smile be seen
 That every heart rejoices!
 Her natal day we'll celebrate
 With ardour and devotion,
 And Britain's festal emulate
 In the Pacific Ocean!

“Now let Old England's flag be spread—
 That flag long famed in story;
 And as it waves above our head,
 We'll think upon its glory!
 Then fire THE GUN—the Bounty's gun—
 And set the bell a-ringing,
 And then with hearts and voices one,
 We'll all unite in singing—

“The Queen! the Queen! God bless the Queen
 And all her royal kindred!
 Prolong'd and happy be her reign—
 By faction never hinder'd!
 May high and low, the rich and poor,
 The happy or distressed,
 O'er her wide realm, from shore to shore,
 Arise and call her blessed!”

* This quotation is taken from the motto of a little volume which will be mentioned in due time.

† This was written in June 1853.

These are words that come echoing cheerily from the Pacific, and may fitly find their way to the regal soli-

tudes of Osborne and Balmoral. Both Queen and Prince know who wrote these lines of simple loyalty and love; nay, they have seen and spoken with him, and that within these last few months, and at Osborne aforesaid. But he has since travelled from the royal presence, exhilarated with its cheering brightness, ten thousand miles and more, and doubtless joined in singing these same verses at that speck in the Pacific, on the 24th of May, now immediately last past. The news has come rather quickly, to be sure; but there is the fact—and it has also come without the aid of the submerged electric wire!

Well! *where is it?* 'Tis Queen Victoria's—but somewhat out of the reach of her gay little Fairy, and, therefore, the Queen may never take a trip to see it! Four years ago, a French military gentleman made his appearance there, with a party of friends, all in military uniform, and politely asked, through our poet, of whom more anon, in broken English, "Veder de people had heard of Prince Louis Napoleon and de French Republique? and would dey enlist demselves under it?" And then he took out a paper for their signatures; but our poet aforesaid quietly pointed to the little English flag waving over their heads at that moment, assured the complaisant visitor that they knew all about Louis Napoleon and the French Republic, but that all the people there were faithful subjects of VICTORIA, QUEEN OF ENGLAND; on which the polite Frenchman bowed, begged pardon, returned the paper to his pocket, and said that "he did not know it was a colony!" Nor is it; but its inhabitants are entirely English; and, says their recent historian, "such a loyal and united community, as a whole, cannot be found in any of the colonies or dependencies of the British empire! The English union-jack is hoisted on all grand occasions; and to England the people would look for protection, should any attempt be made to disturb their position." Ay, and as fast as steam or sail could bring their protectors, they

would go! And one of them—as brave and good an admiral as ever strode quarterdeck—has recently been to this mysterious place, and speaks of it as we do. "I stayed," says he, "four days upon that speck on the ocean, but rising like a paradise from its bosom!" * * * "Away! away!" says one who accompanied him, "we are off to the world again, truly sorry to leave this island; their happiness in this life consists solely in virtue, and their virtue is their truest pleasure!" Ay, admiral! as you stood on the quarterdeck, while your noble ship fired twenty-one guns in honour of her Majesty's flag, they said, in thundering tones, "Queen Victoria will protect you," as far as she can; but, dear islanders, you are safe under the protection of a higher Power, who listens well-pleased to the voice of prayer and praise ever ascending the heavens from your swelling wilderness of waters.

But *where is it?* If we had an eight-thousand-mile boring iron, after it had passed through heaven only knows how many miles, as Humboldt would tell us, of boiling granite and vacant space, or water, or whatever else constitutes the globe which is favoured with the existence of London (at which point the boring iron would enter), it would come poking out at the antipodes, not so very far from our little paradise. We say, not so very far—but, in operations on so grand a scale, we must be allowed literally a little latitude—and longitude. But our island, for island it is, is to be found in the waters which contain the island home of immortal Robinson Crusoe! No gold has been found there, but a much more remarkable article. Yet it will tempt none of our venturesome Californian and Australian emigrants to go in quest of it: it is VIRTUE grown out of VICE: INNOCENCE out of GUILT! Ah! what a thrilling page of man's history chronicles that same little spot! Let us read it off in our own way, and take our own time in doing it. We ought all to take pains with our task; for—shall we say it?—MAGA is no stranger

to that little paradise ! And well we knew, from that same poet of whom we have been speaking, and whom we ourselves saw shortly before he was seen by Majesty, that they have read—and perhaps they are at this moment reading—what* has been given to the world from these pages. And, patient, confiding reader, rarely have they contained anything to compare, in interest and instructiveness, with the events which we shall try now to present to you as some of them have recently come under our own notice ; and we shall, for a reason of our own, reserve, till somewhat advanced in our story, all indication of the source from which we have taken it. Those events are of a nature to arrest the attention, and occasionally to agitate and excite the hearts and imaginations of all classes of readers. Some of them are old, others new, and both thoroughly authentic ; but the former acquire a vivid and charming air of novelty, from their connection with the latter.

THE MUTINY.

Lieutenant Bligh had been for several years sailing-master in the *Resolution*, of the celebrated circumnavigator, Captain Cook ; and in the year 1787 was intrusted with the command of his majesty King George the Third's armed ship the *Bounty*, on an interesting expedition to the South Sea Islands—namely, acting on the suggestion of Sir Joseph Banks, who had visited Otaheite with Captain Cook in 1769—to try the experiment of introducing into the West Indies plants of the bread-fruit tree, which supplied their food to the Otaheitans. The *Bounty* set sail from Spithead on the 23d December 1787. Mr Bligh was then in the prime of life, about thirty-three years of age. He returned to England and landed at Portsmouth on the 14th of March 1790 ; having experienced during that brief interval, such a disastrous adventure as will, with its incidents, always associate his name with one of the most

painfully interesting passages in our naval history. How little he thought of it, as he issued in buoyant spirits from Spithead ! The *Bounty* was of 215 tons burden, and including Bligh, a botanist, and a gardener, carried forty-six persons. On the 26th of the ensuing October, they reached Otaheite, now called Tahiti, and met with a very friendly reception from the natives who supplied them in abundance with roasted pig and bread-fruit, during a delightful stay of six months, during which Mr Bligh succeeded in collecting upwards of a thousand plants of the bread-fruit tree. With these they quitted Tahiti in the spring of 1789, on their way to the West Indies. Mr Bligh, though an able commander, seems to have been of a somewhat hasty temper ; and it is possible that he and the master's mate, Mr Fletcher Christian, lived not on the best terms together. The latter was a young man, only twenty-four years old, of respectable family, of talent in his profession, and possessed of a daring and adventurous spirit.

On the evening of the 27th of April 1789, the commander invited him to supper, but he declined ; having, doubtless, by that time conceived the audacious purpose which he afterwards so quickly carried into effect. This memorable night was one distinguished, in even the tropical regions, for its tranquil loveliness ; and we may conceive the commander of the *Bounty*, as his vessel softly claved the sparkling waters, and his sails glistened in the silver moonlight, pacing the deck, and enjoying the beauty of the hour. But who can tell what an hour may bring forth ? He was woke out of sleep at break of day by a startling vision—his cabin full of men armed with pistols and cutlasses, headed by Mr Christian ! On his calling out to know what they meant, a voice sternly exclaimed, " Hold your tongue, sir, or you are dead this instant ! " With oaths and great violence they tied his hands behind his back, without giving him time to dress ; and then hurrying him on deck, forced him, with eighteen persons, chiefly officers, superior and petty,

* An American copy of "Ten Thousand a-Year," which had been purchased from the captain of an American whaler.

into the ship's launch, flinging to them about 32 lb. of pork, 150 lb. of bread, 28 gallons of water, 6 quarts of rum, 6 bottles of wine, 4 cutlasses, a quadrant, a compass, and a small quantity of canvass, twine and cordage. The heartless mutineers then sailed away, leaving their unfortunate commander, and almost all his officers, nineteen persons, in a boat on the Pacific ocean only 23 feet long, and 6 feet 9 inches broad, heavily laden, and without any awning! Could the mutineers have foreseen what was in store for them, they would not have dared a retributive Providence, and might have reflected a little on an old English maxim — "Begin nothing, of which you have not well considered *the end*." Which fared worse, the mutineers or their victims, remains to be seen. We shall rapidly follow the course of each.

THE BOAT ADRIFT.

Here is scope for the imagination, and for sympathy! — What will be thought of a slight open boat, thus crammed with human beings, performing a voyage across the ocean of nearly four thousand miles? Well indeed, and often, might they have exclaimed, on their lonely and perilous voyage,

Ye gentlemen of England that dwell at home
at ease,
Ah! little do you think upon the dangers of
the seas!

The ship left the hapless boat's crew at about thirty miles' distance from Tofoa, one of the Friendly Islands, and the first thing attempted by the latter, was to land at the island, to procure bread-fruit and water. The savages, however, received them barbarously, attacking them with stones, and beating them off the island; where they left dead one of their number, who had gallantly remained last on shore to push the boat off. The barbarians surrounded and killed him on the spot, and others pushed off in canoes to attack the unfortunate boat's crew, who, it must be remembered, had not been vouchsafed a single piece of fire-arms for their protection. Some clothes

thrown into the water to amuse their pursuers, however, diverted their attention; and Mr Bligh and his friends escaped massacre. But what was now to be done? Whither were they to direct their course?

The world was all before them, where to
choose
Their place of rest, and Providence their
guide!

After much consideration, Mr Bligh obtained his companions' concurrence in a proposal to make for a Dutch settlement on the island of Timor, of which they knew nothing but the name, a distance of 3618 miles! The gun-wales of the boat were only six inches above the water, and it is easy to imagine the misery to which eighteen people were to be so long consigned, even regarding only their cabined, cribbed, confined condition: they were to traverse the ocean by day, by night, in all weathers, over a space of comparatively unexplored ocean equal to nearly a sixth of the entire circumference of the globe.

They started upon their voyage on the 2d of May; all Mr Bligh's company having solemnly promised him to be content with one ounce of bread and a quarter of a pint of water per day, a-piece. One half of them were to be on the look-out, while the others lay down in the boat's bottom: and not having room to stretch their limbs, and being exposed to constant wet and colds, they suffered, poor souls! quickly and severely from cramps which almost disabled them from moving a limb. What a look-out by day and by night! One can imagine them often gazing down into the depth beneath them—within a few inches from its surface, and watching the dark shadows of the sharks flitting around them, waiting for a banquet, which any sudden caprice or accident might bring them! After five days' sail the disconsolate voyagers were startled to find two large canoes, filled with cannibals, making toward them with great speed, from the Feejee Islands. The canoes continued the chase till within two miles' distance, when they discontinued it. Sharks beneath, cannibals

behind, storms above and below! What sources of fear and misery! What long hours of loneliness and terror must have been those of this dreary boat's crew! They encountered tremendous thunder-storms: by one of them, shortly after starting on their voyage, they were nearly swamped; yet these brave and good souls placed their hope in God, to Whom they often addressed a devout prayer, composed for them by their commander, partly from his recollection of the Prayer-Book. He wrote it in a small blank signal-book, now extant; and it contains a humble confession of sins on the part of those suffering under the divine chastisement, invokes the protection of the Almighty in their misery and danger, and returns thanks to Him who had spared their lives from day to day. Poor Bligh tried as long as he could to note a few observations, chiefly of places he passed, in this book; and this blotted and weather-stained document, an affecting relic, is now in the possession of his daughters. "It is with the utmost difficulty," he says, "that I can open a book to write; and I feel truly sensible I can do no more than point out where these lands are to be found, and give some idea of their extent."

It was fortunate, indeed, that no quarrels or dissensions seem to have broken out among the little crew. Had it been so, what might not have been the consequence? As early as the 8th of May, the allowance of food to each was necessarily reduced to one and a half ounce of pork, half a pint of cocoa-nut milk, an ounce of bread, and a tea-spoonful of rum, Bligh measuring out the allowance very accurately, by means of a pair of scales which he made out of two cocoa-nut shells, while a pistol-bullet (of twenty-five to the pound) served as a weight to fix the allowance of bread to each. The half-pint of cocoa-nut milk, however, was soon further reduced to a quarter; and as for the bread, wetted and decayed as it was, and doled out thus by bullet-weight, it was eaten with the utmost relish. A fearful storm of thunder and lightning

drenched them to the skin, yet proved a very godsend, for it produced them twenty gallons of water. This was dealt out three times a day, in a small horn cup two inches deep and two in diameter, and round it was written by Bligh, "Allowance of water three times a day." He took his own meals out of a small gourd, round which he also wrote, "The cup I eat my miserable allowance out of." The bullet was afterwards set in a metal plate, on which Bligh inscribed, "This bullet, 1-25th of a lb., was the [weight of the] allowance of bread which supported eighteen men for forty-eight days, served to each person three times a day, under the command of Captain William Bligh, from the 28th April 1789 to the 14th June following." All these deeply interesting relics are now in the hands of his daughters.

From the 10th of May they encountered a succession of storms, with frequent thunder and lightning, the sea constantly breaking over the boat, and nearly filling it with water, which they had to bale out as quickly as possible to prevent being swamped; most of them being, moreover, seriously weakened and ill, from cramps and spasms. They gained some slight relief by adopting a suggestion of their thoughtful commander,—viz., they all took off their clothes, steeped in rain-wet, and wrung them in the salt-water, which produced some little warmth to their shivering limbs. What a sight these unfortunate beings, thus engaged on the lonely ocean must have presented to a pitying beholder! To aggravate their disastrous condition, their little store of bread had become soaked in the salt water, which had broken over them incessantly; and even of their sorry fare, their pittance, by the 24th May, was reduced to 1-25th of a lb. for breakfast, and the like quantity for dinner, omitting supper! On the 25th, they succeeded in capturing one or two sea-fowl that came so near the boat, which must have been indeed a novel sight to them! as enabled the mariners to catch them with the hand! They were of the size

of a pigeon, and each was cut into eighteen pieces, and eaten, of course, uncooked. About this time the heat of the sun became so intense that it caused a languor and faintness which made them weary of life. On the morning of the 29th they found themselves within a quarter of a mile of rocks, on which the sea was breaking furiously, but they contrived to haul off, and so escape instant destruction. They were able to steer through an opening in the reef, and found a small island within it, which Bligh named "Island of Direction." "We had," says he, "returned God thanks for His gracious protection; and with much content took our miserable allowance of a 25th of a lb. of bread, and a quarter of a pint of water (with which they had been furnished, it will be remembered, by the thunder-storm). At length they began to near New Holland, and landed on a fine sandy bay in an island near the main, where they luxuriated on oysters, water, and berries, and slept comfortably all night; but as they were preparing in the morning to leave, they found a large party of natives armed with spears, running and hallooing towards them—whether friendly or not, Mr Bligh and his companions did not pause to ascertain, but put off safely to sea. On the 31st they landed at another little island, where they again found oysters; and it may be said, but in a sad way, that they indeed "astonished the natives," on whom they supped heartily. On the evening of the 3d June they succeeded in threading their way through a most difficult and dangerous passage, (the Endeavour Straits), and were again in the open ocean; but here they had to encounter long-continued wet and stormy weather, from which their exhausted frames suffered most severely. Incessant fatigue, and exposure to cold and wet, overpowered the strongest among them, and several seemed at the point of death. During all these terrible trials, the noble-spirited commander contrived to support their sinking spirits by every exertion to distract and amuse their attention, he himself

all the while as exhausted as themselves. At length, however, his fortitude and constancy were rewarded; for, behold! at 3 A.M. of the 12th June, their eyes were ravished with a sight of their long-sighed-for point of destination! Timor! Timor!—the island of Timor was in sight! Ah! who shall tell the thrill of ecstasy that shot through the hearts of the weather-beaten and all but prostrate boat's crew, as they first saw the island, and found themselves nearing it? What pious gratitude filled them towards their good God, in Whose hands are all the waters of the earth, and Who had conducted them through such unexampled perils!

On the 14th June they landed at the Dutch settlement of Coupang, after having been FORTY-EIGHT long days and nights in this open boat on the ocean! and received a hearty and hospitable welcome from the governor and all the other residents. On the 30th of August Mr Bligh sailed with his surviving crew (for one had died of fever at Timor), taking with him the launch in which they had crossed the ocean, for Batavia; and afterwards homeward with eleven out of the original eighteen, the others having died or preferred remaining in Batavia. He landed safe at Portsmouth on the 14th March 1790. His cruel case was instantly made known, and attracted universal sympathy. He was quickly promoted, served with great distinction at the battles of Camperdown and Copenhagen, at the latter of which he commanded a ship under Lord Nelson; and was afterwards appointed governor of New South Wales, and ultimately became a vice-admiral. Thenceforth he lived happily in the bosom of his family, and died in London, in the year 1817, aged sixty-three.

RETRIBUTION.

The atrocious act of mutiny and piracy excited, as may well be imagined, universal indignation in England; and a frigate, the Pandora, under the command of Captain Edwards, was forthwith despatched to the scene

of the monstrous outrage, with orders to visit the Society and Friendly Islands, and seize and bring home all the mutineers they might discover. The Pandora arrived at Matavai Bay, off Otaheite, on the 23d March 1791; when three of the offenders immediately came on board, surrendered themselves, and were instantly put in irons. Eleven more were seized at Otaheite, and also put in irons. Two of the original mutineers, who had landed at Otaheite, were dead—after one of them had become a king, and been shortly afterwards murdered by the other, who was himself instantly stoned to death by the natives. No tidings could be gained of the remaining nine mutineers nor of the Bounty; and after making all possible efforts to discover them, the frigate, with her fourteen mutineers lying in irons in a cage on the after part of the quarter-deck, only eleven feet in length, called "Pandora's Box," set off homeward. She was wrecked, however, on a coral reef off New Holland, on the 29th August 1791, and the crew had to navigate a thousand miles in open boats. Four of the mutineers went down, in their irons, with the Pandora; others of their companions succeeded, with desperate efforts, in disengaging themselves from their irons. Thirty of the crew also perished. Captain Edwards, and his surviving men and prisoners, succeeded in reaching a sandy quay, only ninety yards long by sixty wide,—a miserable spot, where they all were nearly consumed, under a vertical sun, from the insupportable heat of which the wretched prisoners had no other defence but to bury themselves up to their necks in the burning sands! The captain and his men had tents made of boats' sails; but he deemed it consistent with duty to refuse the slightest shelter or protection to his wretched prisoners! One of them was a young gentleman, named Peter Heywood, not sixteen years old at the time of the mutiny, in which he had taken no voluntary part. The only article he saved from the wreck was a Common-Prayer Book, which he held be-

tween his teeth as he swam to shore for his life.* He, with his guilty surviving companions, reached England, heavily chained and almost in rags, on the 19th June 1792.

On the 12th September, Heywood and his nine fellow-mutineers were brought to a court-martial at Portsmouth, on board the Duke, the president being Lord Hood. On the sixth day the court acquitted four of the ten, and found the remaining six guilty of the capital offence of running away with the ship, and deserting His Majesty's service. Among these latter was poor Peter Heywood. They were sentenced to be hanged by the neck, on board of one of His Majesty's ships of war; but two of them, Peter Heywood and another, were recommended to His Majesty's mercy. Two days afterwards, the unfortunate young gentleman wrote a letter to a clergyman, a friend of his family, containing the following remarkable and most affecting passages:—

"On Tuesday morning the 18th inst., the dreadful sentence of DEATH was pronounced upon me, to which (being the just decree of that Divine Providence who first gave me breath) I bow my devoted head with that fortitude, cheerfulness, and resignation, which are the duty of every member of the Church of our blessed Saviour and Redeemer Christ Jesus. To Him alone I now look for succour, in full hope that perhaps a few days more will open to the view of my astonished and fearful soul, His kingdom of eternal and incomprehensible bliss, prepared only for the righteous of heart. I have not been found guilty of the slightest act of the detestable crime of mutiny, but am doomed to die for not being active in my endeavour to suppress it. Could the evidences who appeared in the court-martial be tried, they would also suffer for the same and only crime of which I have been guilty. But I am to be the victim. Alas! my youthful inexperience, and no depravity of

* This precious relic, justly so deemed, is now [1854] in the possession of Mrs Heywood, the widow of Captain Peter Heywood.

will, is the sole cause to which I can attribute my misfortunes. But, so far from repining at my fate, I receive it with a dreadful kind of joy," [what a marvellous expression!] "composure, and serenity of mind, well assured that it has pleased God to point me out as a subject, through whom some useful, though at present unsearchable intention of the Divine attributes may be carried into execution for the future benefit of my country. Then why should I repine at being made a sacrifice for the good of perhaps thousands of my fellow-creatures? Forbid it, Heaven!"

On the 24th October 1792, however, he and another received an unconditional pardon; another was respited, and ultimately pardoned; and three were hanged at the yard-arm, a miserable spectacle, in Portsmouth harbour, on board the Brunswick. When Captain, Montague, two days before the execution, read young Peter Heywood His Majesty's gracious pardon, the youth addressed him in the following noble strain:—

"Sir, when the sentence of the law was passed upon me, I received it, I trust, as became a man; and if it had been carried into execution, I should have met my fate, I hope, in a manner becoming a Christian. Your admonition cannot fail to make a lasting impression upon my mind. I receive with gratitude my sovereign's mercy, for which my future life shall be faithfully devoted to his service."

And faithfully his future life redeemed that solemn pledge. He immediately re-entered His Majesty's service, rose in it rapidly to high station, greatly distinguished himself, and died in honourable retirement in the year 1831, in his 58th year.

His considerate and discriminating judges, after weighing all the facts of the case, had regarded him as having been more unfortunate than criminal, —from his youth, the coercion under which he had laboured, and the absence of any proof that he had taken part in the outrage inflicted on his commander, or his fellow-victims.

His early misfortunes saddened and sobered him for life; he became the idol of those who were placed either over or under him; and it stands recorded of him by one of our naval annalists, "that his king and country never had a more faithful servant, nor the naval service a more worthy and respectable member."

THE MISSING MUTINEERS.

It seems difficult to assign adequate motives for the mutiny of the *Bounty*, or at least to imagine the ulterior objects of its perpetrators. Fletcher Christian, the ringleader, was a gentleman by birth and education, brother of Professor Christian, the annotator of "Blackstone's Commentaries," and Chief-Justice of Ely; while Mr Young, one of the midshipmen who shared his desperate venture, was the nephew of a baronet. What could such men have imagined would be their destiny? What, for instance, could they do with their king's ship? What pleasure could they have in spending the rest of their lives among savages?

It was twenty years before the slightest trace of them could be detected, but then their deplorable fate became known. It seems that as soon as they had turned adrift their commander, Christian sailed for an island 500 miles south of Otaheite, intending to land there; but the inhabitants refusing to allow them, they returned to Otaheite. Once more they went to the island in question, were again repulsed by the natives, and once more repaired to Otaheite. It was now necessary for them to consider seriously how they were to dispose of themselves. All but nine resolved to settle at Otaheite, Christian and his eight companions resolving to try their fortunes elsewhere. It so happened that he had found in the *Bounty*, among its commander's books, a copy of Commander Carteret's "Voyage round the World;" and among his other discoveries, the author mentions a very little island which he first saw

on the 2d July 1767, in the South Pacific Ocean; "it appeared," he said, "like a great rock, rising out of the sea," and was so high as to be visible at more than fifteen leagues' distance. * * * * Its highest point rose 1008 feet above the level of the sea, and in clear weather could be seen at forty miles' distance. As it was first seen by a young gentleman named Pitcairn, they gave it his name, "Pitcairn's Island," and tried to land on it; but the surf was raging so violently around it as to render near approach impossible. It is at a distance of 1200 miles from Otaheite, and is in latitude $25^{\circ} 4'$ south, and in longitude $180^{\circ} 8'$ west. It is only four miles and a half in circumference, a mile and a half being its greatest length. It is of volcanic origin, having been elevated from the bed of the ocean by some tremendous convulsion caused by the action of fire, which has given a vertical character and a jagged outline to the stony mountains, and rendered the scenery wildly picturesque. It is covered with trees—the cocoa-nut, plantain, bread-fruit, and banyan—and its climate is favourable to the growth of vegetables. There are no venomous reptiles. There is only one point, called Bounty Bay, where access is possible, and that only in calm weather; and even then, great care is requisite to avoid the breakers. There is scarcely any beach; and almost instantly on landing, the visitor commences a precipitous ascent. This was the desolate spot selected by the mutineer and his companions for their future residence! They sailed in the Bounty; and when it arrived, there landed from it twenty-eight souls; viz., Christian, Mr Young, a midshipman, and seven seamen; and all these nine Englishmen had married Otaheitan women! who accompanied them. There were also six Otaheitan men, three of them with wives; and a child ten months old. Let the reader attempt to realise, for a moment, the feelings of a gentleman—of two gentlemen, married to SAVAGES, doomed to spend the rest of their days on that forlorn spot, ten thousand miles away

from home, where were their anxious families and friends, and where also resided those who doubtless were sending forth scouts to scour the ocean in quest of the guilty occupants of that island, and bring them home to suffer a just, a terrible, and an ignominious death!

Christian and his friends were not, however, the first occupants of the island, for they found indubitable traces of ancient predecessors, savage and idolatrous; hatchets; spear-heads of hard stone; a large stone bowl; carvings of the sun, moon, and stars; four images six feet in height; and a number of skulls, buried, each having a pearl under it. The new-comers found no other traces of man on the island; they were the only living human occupants.

MURDERS.

Fearful times awaited the mutineers and their companions. Christian retained for a while the position and authority of head of the community; and his mind seems to have been occupied with efforts to preserve order and peace which were hourly interrupted by his turbulent and savage companions. Much of his time, however, was spent on a spot on the top of a high rock, which he called his "look-out," whence he would anxiously survey the ocean, to see whether it bore along its bosom the coming avenger! What thoughts must have been his, on these occasions of mournful solitude! What would he then have given to undo all that he had done!

Shortly after their landing, they broke up the Bounty, and so condemned themselves to perpetual imprisonment in the island. There were sanguinary frays incessantly arising between the Europeans and the savages; and at length the Otaheitan men entered into a plot to destroy their European companions. The wives of the latter, however, discovered it, and disclosed it to their husbands on the eve of the projected massacre. The result may be anticipated. Within a year's time, Christian and four of his

fellow-countrymen were murdered by their Otaheitan companions, all of whom were in turn slain the same year! One was killed, with an axe, by *Mrs Young*, the midshipman's Otaheitan wife! As soon as she had done this, she signalled her husband, and he immediately shot the sole surviving Otaheitan! In the year 1794, there were only four of the Englishmen alive, one of whom was Mr Young; and the five skulls of the murdered Englishmen, including Christian, were kept by the women of the place as trophies; and they were afterwards, only with much difficulty, prevailed on to give them up to be buried.

One of the survivors was unhappily acquainted with the art of distilling; and having converted a copper boiler from the *Bounty* into a still, he made ardent spirits from the root of a plant in the island. How strongly this cause operated in promoting turbulence and bloodshed may be imagined. He himself, in a fit of *delirium tremens*, committed suicide—throwing himself from a rock into the sea; another was killed by Mr Young, and one John Adams, in self-defence; and of all the fifteen unhappy men who had landed from the *Bounty*, only two died a natural death—Young, of asthma, in 1800; and Adams, in the year 1829. The last survivor of those who had come in the *Bounty* was Mrs Young, who died at an advanced age in the year 1850. From all this it may appear, that the mutineers must have found the barren rock to which they had betaken themselves, become a very hell upon earth.

THE ISLAND PATRIARCH.

The last male survivor was the John Adams above-mentioned, a seaman; and marvellous, indeed, was the change which reflection and mournful experience had effected in his mind and character. He had lived not only among scenes of violence and blood, but in constant terror of being discovered by some ship approaching the island, and taken home to be hanged. As a sample of his sufferings on this

score, in the year 1795 a ship was seen coming near the island,—on which he and his brother mutineers hid themselves in the bushes, in great terror. When at length they dared to venture out, they stole cautiously to the landing-place, and found that the ship had disappeared. As a knife and some cocoa-nuts were lying near the water's edge, it was clear that some one had landed, but doubtless not having seen any traces of occupation, had left, and the ship had proceeded on its voyage.

In the year 1800, Adams, then only thirty-six years old, found himself the only man in the island—his companions being twenty of the children of his deceased comrades; but they had come to regard him as their common father, with reverence and affection. He was providentially possessed of one copy of a Bible, and of a prayer-book, which had belonged to the *Bounty*, and of these he made unceasing use. Two remarkable dreams occurred to him in the year 1810, which he always regarded as having been designed to awake in him reflection and repentance; and he became a really devout man—training up in Christianity the young semi-pagans who surrounded him. He had constant morning and evening prayers, and was never tired of reading to them the Scriptures, in which they took such a delight, that on one occasion, two of the lads having earned a little present of gunpowder, a precious commodity there, as a reward for their labour in preparing the ground for planting yams, proposed, that instead of the present, Adams should read them some extra lessons from the Bible! He became, in truth, as he has since been called, an island patriarch.

In the year 1808, an American captain landed at the island, not a little to Adams' alarm, and, on quitting, took with him a chronometer and compass which had belonged to the *Bounty*, and forwarded them to the Admiralty—being, of course, acquainted with the story of the mutiny. No steps, however, were taken by the British government; but six years afterwards,

Adams beheld with dismay two men-of-war approaching the island, and he reasonably apprehended that at length his hour was come, for the two captains, with some officers and men, were seen descending the ships' sides, and immediately landed. Adams made no attempt to conceal himself—resigned to his destiny; but was quickly comforted by the tidings that he was not to be arrested; that a quarter of a century had passed away, and his presence was considered useful to the young islanders. Then, indeed, a mill-stone fell suddenly from his neck. How the weight of it had worn him down, may be guessed from the fact, that Sir Thomas Staines, one of the two captains, styled him, in his despatch, “a venerable old man”—whereas he was then only *fifty* years old! Sir Thomas added, “His exemplary conduct and fatherly care of the whole little colony could not but command admiration. The pious manner in which all those born on the island have been reared—the correct sense of religion which has been instilled into their minds by this old man, has given him the pre-eminence over the whole of them—who look up to him as the father of the whole, and one family.”

When Sir Thomas and his companions saw the island they did not suppose it inhabited, and were greatly surprised to observe, as they approached plantations laid out, and neatly constructed huts and houses! When within two miles from the landing-place, some natives were observed bringing down their canoes on their shoulders, in which they dashed through a heavy surf, and pulled off to the ships. What was the astonishment of the sailors to hear one of the two savages exclaim, on approaching the ship, “Won’t you heave us a rope, now?” And who should these prove to be, but a son of Christian, twenty-five years old, and of Young, eighteen years old! “They were fine handsome fellows, tall and well-proportioned, and their features were those of an honest English face.” Their only dress was a piece of cloth round their loins, and a

straw hat ornamented with the black feathers of the domestic fowl. When they had got on board, Sir Thomas Staines took them down into his cabin to give them lunch, and was moved with sudden tenderness on seeing one of them rise up, place his hands in a posture of devotion, and distinctly and solemnly say, “For what we are going to receive, the Lord make us truly thankful!” On accompanying them back to the island, and accomplishing the landing with no little difficulty, Sir Thomas was charmed with the scene and the reception which awaited him. Poor old Adams and his wife, who was blind and infirm, conducted their great guests to his snug and neat house, and spread out for them a little repast of yams, cocoa-nuts, and fine fresh eggs.

They found the settlement to consist of forty-six grown-up young people, with a number of infants. The young men were all fine athletic fellows, their faces full of frankness; but the young women excited great admiration. They were tall and finely formed; their faces beaming with smiles, but wearing an air of modesty and bashfulness that would do honour to the most virtuous nation on earth. “Their teeth like ivory, even, regular, and beautiful, without a single exception; and all of them, both male and female, had the most marked English features.” Their little houses were models of comfort and cleanliness, and the grounds all around were carefully cultivated. They were very systematic in conducting their little affairs. Old Adams, for instance, kept a careful register, containing the times and account of their work, and what each had acquired by it; and they had a regular system of barter—as of salt for fresh provisions; vegetables and fruit for poultry, and fish, &c. All were engaged in the cultivation of the ground (growing chiefly yams) and fishing; and when one had cleared a sufficient quantity of ground, and had stock enough to maintain a family, he was allowed to marry—but always with the consent of Adams. The utmost harmony prevailed in

their little society. They were simple, sincere, affectionate, and pious, and exemplary in discharging their religious duties.

Thus matters continued till the year 1825, when Captain Beechey visited the island, in the Blossom, and has left on record an affecting picture of their primitive simplicity and happiness. They were still under the care of their old patriarch Adams. "These excellent people," said Captain Beechey, "appear to live together in perfect harmony and contentment; to be virtuous, religious; cheerful and hospitable even beyond the limits of prudence; to be patterns of conjugal and parental affection; and to have very few vices. We remained with them many days, and their unreserved manners gave us the fullest opportunity of becoming acquainted with any faults they might have possessed." Their reverence for the Sabbath would shame many a highly-civilised Christian community. It was, indeed, "kept holy"—a day of rest, in truth, and of cheerful reverence towards the Most High. Their services were conducted in strict conformity with the usages of the Church of England, the prayers being read by old Adams, and the lessons by one appointed by him for that purpose.

Their only intercourse with the great world was on the occasion, few and far between, of ships of war, whalers, or others, touching at the island. "These seas," says a traveller on them during the last year (1852), "are but little frequented. To give an idea of their vast extent—notwithstanding the thousands of ships that are trading on them, we have seen only one ship at sea, and our track measures some 4500 miles! What a little spot this island appears in the vast Pacific! a mere rock, apparently incapable of resisting the mighty waves of so vast an ocean. The mutineers might well deem themselves secure on so small an island!"

At length,

Declining gently to the last, this good old man, he died!

Old John Adams expired on the 5th

March 1829, in the sixty-fifth year of his age—a sad day for the little community which he had trained into one so exemplary: thereby offering the best atonement in his power for the guilt which had stained his early years.

THE PASTOR OF PITCAIRN.

Not quite four months, viz. on the 15th November 1828, before the death of the island patriarch, there arrived at Pitcairn a remarkable man, destined to be his successor in the confidence, affection, and government of that little community. He seemed really to have been marked out for the post by Providence. The person here spoken of bears the by no means aristocratic name of GEORGE HUNN NOBBS. He was born in this country in 1799; and went to sea at the early age of eleven years, when he became a midshipman in the British navy. He afterwards held a commission in the Chilian navy, under the present Earl of Dundonald, then Lord Cochrane, and in consequence of his services, became lieutenant. He was at length, after a gallant and desperate conflict with a Spanish gun-brig, taken prisoner by the troops of the piratical Spanish general Benevedeis, who was a very fiend incarnate of cruelty. He shot all his prisoners, except Lieutenant Nobbs and three English seamen, all four of whom lay under sentence of death, and for three weeks in hourly expectation of being shot; Lieutenant Nobbs daily seeing his fellow-prisoners led out to death, and hearing the reports of the muskets from which they suffered! This monster Benevedeis would invite the captive officers to an elegant entertainment; immediately after which he would have them marched into the courtyard and shot—their host standing at the window to enjoy the spectacle! Such was the man at whose mercy poor Lieutenant Nobbs lay for three weeks; at the end of which he was suddenly and unaccountably exchanged for a prisoner; Benevedeis himself being soon after taken prisoner, sentenced to death,

tied to the tail of a mule, so dragged to the Palace Square, and there hanged. After many adventures and much dangerous service, Mr Nobbs quitted Chili, and returned to England in 1822, in a vessel which had touched at Pitcairn. The captain gave such a description of the happiness of the little community, that Mr Nobbs became irresistibly impelled to go and settle there, anxious only to pass the remainder of his days in peace and usefulness among his fellow-creatures. Early in 1826, having then been four times round the world, he quitted England, with the intention of going to Pitcairn. He went by way of the Cape of Good Hope, India, and Australia, and at length reached Callao, in Peru, where he met the owner of a launch, who agreed to accompany him in it to Pitcairn, provided Mr Nobbs would fit her out. This was done; and these two persons, as if emulous of the feat of Bligh and his companions, went alone in this frail launch to Pitcairn, a voyage of three thousand five hundred miles, which they accomplished in forty-two days—arriving in November 1828. Soon after their arrival the owner died; whereupon the launch was hauled ashore, and her materials were used to build a house for Mr Nobbs. Old Adams, on hearing his errand and his motives, and doubtless beginning to be apprehensive for those from whom death must soon separate him, received the stranger with kindness, and he became a sort of schoolmaster in the island. On the death of Adams in the March of the ensuing year, Mr Nobbs continued at his post, and soon succeeded in establishing himself in the affections of the people, then only sixty-eight in number, serving them in the threefold capacity of pastor, surgeon, and schoolmaster. Three years after his arrival, however, there occurred a sufficiently ridiculous but vexatious affair. A person named Hill came to the island, professing himself authorised by the British Government to reside there as its representative! He soon sowed dissensions among the simple-minded

inhabitants, whom he also terrified into obedience by the fear of giving offence to the Government. Honest Mr Nobbs soon saw through the swaggering stranger, by whose intrigues, however, he was compelled to quit the island, leaving the new-comer boasting from time to time of his splendid rank and station at home. He said he was “a very near relative of the Duke of Bedford, and that the Duchess seldom rode out in her carriage without him!” Whilst the people were listening with awe to these magnificent statements, who should arrive at the island, positively as if for the purpose of discomfiting imposture, but Captain Lord Edward Russell, a veritable son of the Duke of Bedford! Mr Hill was thunderstruck. Lord Edward would have made short work of it, and removed him *instantly* from the scene of his impudent and mischievous intrusion and imposture;—but could not do so without orders. In the ensuing year, however, another ship of war arrived, her captain armed with the requisite authority, and removed Mr (or, as he seems to have called himself, *Lord*) Hill to Valparaiso. He never made his appearance again in the island; and Mr Nobbs having received a pressing and unanimous entreaty from the inhabitants to resume his old station and duties, complied with it, having been absent for the period of nine months, occupying himself as a teacher at the Gambier Islands, which were about three hundred miles’ distance from Pitcairn.

It may be remembered that a child, ten months old, accompanied the mutineers from Otaheite to Pitcairn. She afterwards married a son of the unhappy Christian, by whom she had a daughter, and that daughter became the wife of Mr Nobbs by whom she has now eleven children. Since his return on the occasion last referred to, this excellent man has never been interfered with in pursuing “the even tenor of his way,” but has evidently conciliated the ardent affection of all classes. He acted from the first as their chaplain (as far as, being a lay-

man, he could), their schoolmaster, their physician, and, in fact, did everything that could be expected from a man of kindly feeling, of no little experience of varied life, of sound education, and devoted piety. His duties were constant and laborious, for all his arrangements were systematic, and he adhered to them with punctilious exactness. Thus every hour of his time was devoted to the service of the islanders and of his own large family. But how was he himself supported all the while? it may be asked. Indeed, his remuneration was for years of the scantiest character, for the Pitcairn Islanders were, as he knew when he first went, very poor. In 1844, he thus explained, in a letter to a clergyman at Valparaíso, some of the straits to which he was driven:—"My stock of clothing which I brought from England is, as you may suppose, very nearly exhausted, and I have no friends there to whom I can with propriety apply for more. Until the last three years, it was my custom to wear a black coat on the Sabbath; but since that period I have been obliged to substitute a nankeen jacket of my own making. My only remaining coat, which is quite threadbare, is reserved for marriages and burials; so that it is customary to say, when a wedding is going to take place, 'Teacher, you will have to put on your black coat next Sunday,' which is equivalent to informing me that a couple are going to be married!"

Some little time afterwards, however, this grateful people placed him on a level with themselves, by assigning him sufficient land for his support.

A PITCAIRN DAY.

It may be pleasing to have an idea of a Pitcairn day. Let it be borne in mind that there is a difference of nine hours between their time and ours;—when, for instance, it is our four o'clock in the afternoon, it is their seven o'clock in the morning. They rise with the light; and the first duty in each house is to read prayers, including two chapters in the Bible. After a slight

refreshment, the business of the day begins. Children are forthwith despatched to the school, during play-hours amusing themselves with kites and ball; but limited space, less in extent than Hyde Park and Kensington Gardens put together—necessarily curtails the diversions of young and old. The men's employment consists in cultivating their land, looking after their gardens, building and improving their little houses, fencing in their plantations, and making hats out of palm leaves, and fancy boxes for barter with the crews of such ships as may call there. At twelve o'clock they have a plain substantial meal of yams and potatoes, made into bread, saying grace before and after meals with scrupulous reverence. Both by day and by night they fish in the deep waters for a kind of cod, grey mullet, and red snapper, which, however, are scanty, and obtained with some hazard. The second meal of the day, for they have but two, occurs at seven o'clock in the evening, consisting of yams, sweet potatoes, and such humble fare as may have been prepared by the females of the family. Once or twice only in the week can they afford the luxury of fish, meat, or poultry. The occupations of the women are their household duties, including especially making and mending clothes; and when they have leisure, they manufacture a sort of cloth out of the bark of the paper mulberry. There are no servants in the island; therefore the wives and daughters do all that is necessary for the family. They do not cook in the house, which being of wood, might be often endangered, but in ovens at a little distance, let into the ground, big enough to contain a good-sized pig, an animal of which they have but few. They have no candles, but use oil, and torches made with nuts of the dodo tree. They have no glass for the windows, but only shutters, which are closed in bad weather. They occasionally have a modicum of tea as a luxury, but their ordinary drink is pure water, neither wines nor spirits being allowed in the island, except for strictly medicinal purposes. On high days

and holy days they treat themselves with cocoa-nut milk, and water sweetened with syrup extracted from the bruised sugar-cane. They retire early to rest, after having performed their family devotions. They sleep secure without the protection of locks, bolts, or bars: there is not such a thing in the island. Think, then, of a moon-light night at peaceful Pitcairn, Londoner, jaded with the uproar and dissipation of a London day or night! See the moon walking in her brightness, and stars shining vividly as *you* never saw them, and both reflected on the illimitable ocean, all calm and beautiful. Not a soul is slumbering there that has not closed his eyes—her eyes—after offering the hearts incense to their Almighty Guardian.

The Pitcairn people are all well educated, and fond of reading; but only books of sterling interest, and moral and religious character, chiefly supplied to them by one of the noblest societies which England can boast—that for Promoting Christian Knowledge. And now has arrived the time for explaining that our readers are indebted for all the interesting facts which may appear in this paper, to a little volume just issued by that Society. Its pious and accomplished author* is the secretary of that society, and, as we learn from its pages, has personal cognisance of many highly interesting facts narrated in it, pledging himself to the authenticity of all, as far as careful inquiry has enabled him to do so. To us it has proved a delightful little volume, and we heartily express our obligations to the reverend author. It breathes throughout a pure spirit of manly sympathy and piety. We should like to be at Pitcairn, when its simple and affectionate inhabitants get their first copy—let us hope as

* *Pitcairn: The Island, the People, and the Pastor; with a Short Account of the Mutiny of the Bounty.* By the Rev. THOMAS BOYLES MURRAY, M.A., Secretary of the Society for Promoting Christian Knowledge; and published under the direction of the Committee of General Literature and Education appointed by the Society. London, 1853. Pp. 280. A fourth, cheaper, and enlarged edition has just [1854] made its appearance, with sundry interesting additions.

many copies as there are islanders—of the volume which has presented so endearing a picture of that distant but *really* happy little family! How they will hang over its pages, by day and by night! But we must proceed.

The great event in the Pitcairners' day is the arrival of a ship, for which they are always—not, as were those before them, with terror, but with eager hope—on the look-out; and the volume before us contains numerous touching little episodes connected with these few and far-between ocean-island visitings. The crews are received with affectionate greetings, and the utmost hospitality which such limited means admit of. Not only has there never been an instance of Jack for an instant misbehaving himself in this sweet scene of peace and innocence, but he has himself often shed tears of sympathy and respect on receiving the civilities of this lonely but confiding little community, and returned their humble hospitalities with such liberality as his captain felt authorised to admit. It is, however, on the arrival of a Queen's ship that the enthusiasm of the islanders is naturally most excited: and who can think, unmoved, of the twenty-one guns' salute from the stately structure on the bosom of the ocean, returned by the single solitary gun in the island? If anything could raise in our estimation the character of British naval officers, it is the accounts of their doings in these distant regions, to be found in this little volume. The tears have several times quivered in our own eyes, when reading the extracts here given from the journals and despatches of captains and admirals, all of whom have exhibited a noble spirit of tenderness and dignity in dealing with this little community. We would have every young officer in Her Majesty's navy read this record of manly sympathy and piety on the part of those intrusted with high and distant commands by the Queen of Great Britain—symboling at once the authority and power of the sceptre which she wields, and the gentle spirit of benignity and piety which animates her heart. But we

shall let our admiral speak for himself.

THE ADMIRAL ON THE ISLAND.

Before, however, we come to this great event, we must return, for a minute, to the pastor of Pitcairn. On the 20th July 1847, a memorial was addressed to the chaplain of H.M.S. *Thalia*, signed by seven of the islanders, including the *chief magistrate*! and the *two councillors*! (for such they have), explanatory of their position and their wants. Their prominent want they shall themselves explain.

"One thing more, before we conclude, we earnestly present to your consideration; and as it comes in an especial manner within the province of your holy office, we would indulge the hope that our application will be attended with success. The case in question is this: Our teacher, who has been with us for nineteen years in that capacity, and whose services to us are invaluable, has never received the license or sanction of the proper authority in that Church of which we are a component part. This circumstance is a source of much anxiety, both to him and us; and as our numbers amount to 138, (71 males and 67 females), and are rapidly increasing, we do most urgently, but most respectfully, solicit your application to the proper quarter for a pastoral letter, inducting or sanctioning our teacher into the holy office he has for so long a space of time unceasingly, untiringly, and worthily filled on this island. That he is deserving such a mark of ecclesiastical approbation and favour, is justly and cheerfully acknowledged by the whole community; and of the great benefit which will accrue to us therefrom, no one can be more competent to judge than yourself."

Rear-Admiral Fairfax Moresby, commander-in-chief in the Pacific, had long felt a deep interest in the welfare of the Pitcairn Islanders, and in the month of July 1851, received the following beautiful and affecting invitation to visit the island, signed by thirteen female inhabitants, in the name of all their sex on the island:—

PITCAIRN, July 28, 1851.

"HONOURABLE SIR,—From the kind interest you have evinced for our little community in the letter which you have sent our excellent and worthy pastor, Mr Nobbs, we are emboldened to send you the following request, which is, that you will visit us before you leave this station; or if it is impossible for you to do so, certainly we, as loyal subjects of our gracious Queen, ought to be visited annually, if not more, by one of her ships of war.

"We have never had the pleasure of welcoming an English admiral to our little island, and we therefore earnestly solicit a visit from you. How inexpressibly happy shall we be, if you should think fit to grant this our warmest wish! We trust that our secluded and isolated position, and the very few visits we have of late had from British ships of war, will be sufficient apology for addressing the above request to you. With fervent prayers for your present and future happiness, and for that of our Queen and nation, — We remain, Honoured Sir, your sincere and affectionate well-wishers."

Signed by thirteen females, "in the name and on behalf of all the rest of the female sex on the island."

Who could resist this? Not an admiral in the service of the Queen of England—least of all good Admiral Moresby; and a year afterwards—viz., on the 7th August 1852—at noon a ship was descried in the far distance, which at sunset was suspected to be a ship of war. The brief night passed in feverish excitement. Before sunrise the people were on the look-out from the precipice in front of the town, waiting for the report of a gun to confirm their hopes. By-and-by, hark! the booming of a cannon electrified the little town! And as the stately ship drew near, behold—an admiral's flag waving proudly in the wind! Would we had room for the description of this signal event given by Mr Nobbs, and the official despatch of the admiral containing an account of his landing, and three days' stay!

It was Sunday morning, and he took his chaplain and several officers with him, all attending divine service, the chaplain preaching in the afternoon. We will, however, give the good admiral's own account of it, in a subsequent letter to a friend, describing the impressions produced by his visit.

"THE PORTLAND, *at sea, August 1852.*

"Of all the eventful periods which have checkered my life, none have surpassed in interest; and, I trust, in hope of future good, the last—our visit to Pitcairn; and surely the hand of God has been in all this, for by chances the most unexpected, and by favourable winds out of the usual course of the Trades, we were carried in eleven days to Pitcairn's from Borobora. It is impossible to describe the charm that the society of the islanders throws around them, under the providence of God. The hour and the occasion served, and I have brought away their pastor and teacher for the purpose of sending him to England to be ordained, and one of his daughters, who will be placed at the English clergyman's at Valparaiso until her father's return. The islanders depend principally for their necessary supplies on the whaling ships;—they are generally American. Greatly to their credit, they behave in the most exemplary manner, very different from what I expected. One rough seaman, whom I spoke to in praise of such conduct, said, 'Sir, I expect if one of our fellows was to misbehave himself here, we should not leave him alive.' They are guiltless and unsophisticated beyond conception. But the time had arrived when preparation for partial removal was necessary, and especially for the ordination of their pastor, or the appointment of a clergyman of the Established Church. They are thoroughly versed in Bible history, which has hitherto kept them from listening to the advances of some over-heated imaginations. I stayed four days upon that speck in the ocean, but rising like a paradise from its bosom. I believe there was scarce a dry eye in the ship when the island-

ers took their leave. We ran within hail of the settlement, hoisted the royal standard, fired a salute, and cheered them."

Here is Mr Nobbs' own vivid and most moving picture* of the noble old admiral's departure from the island:—

"And now comes the leave-taking. The venerable and benevolent commander-in-chief of Her Majesty's forces in the Pacific, standing on the rocky beach at Bounty Bay (the very spot where the mutineers had landed sixty years before)—himself the oldest person there, by fifteen years, surrounded by stalwart men and matronly women; youths, maidens, and little children—every one in tears, and most deeply affected, formed a truly impressive scene. The boat was some time in readiness before the admiral availed himself of an opportunity to embark. Some held him by the hand, the elder women hanging on his neck, and the younger ones endeavouring to obtain a promise that he would revisit them. As a number of our men went on board with the admiral, a similar scene occurred there; and as the last boat pushed off from the ship, some of the hardy tars, standing in the gangway, were detected hastily brushing away a tear. The frigate now stood in for the last time; and, hoisting the royal standard, fired a salute of twenty-one guns. The tars manned the rigging, and gave three hearty cheers, and one cheer more. The islanders responded; the band struck up 'God save the Queen,' and the stately Portland started on her track."

We said that this is a picture, as vivid as words can paint it; and it is right worthy of the richest pencil at the command of the Royal Academy.

The islanders could be induced only with extreme difficulty to part with their pastor for a while, when it came to the point, ardently as they had desired that he should be invested with the character of a clergyman of the Church of England. On the admiral's

* Pp. 106-8.

promising, however, to leave his own chaplain at the island, till their pastor's return, they allowed him to go. Listen to the testimony of the admiral's chaplain as to the people among whom he had been placed for a while.

"September 5, 1852.

"The accounts of the virtue and piety of these people are by no means exaggerated. I have no doubt they are the most religious and virtuous community in the world; and during the months I have been here, I have seen nothing approaching a quarrel, but perfect peace and good-will among all." He also found Pitcairn, as did his admiral, a "Paradise!"

THE PITCAIRN PASTOR IN ENGLAND.

Poor Mr Nobbs had not fitting clothes in which to face the great world, when he quitted the island, except those with which the admiral furnished him. Having carried him to Valparaiso, the admiral then supplied him generously with the means of obtaining a passage thence to London, and presented him with £100 towards his expenses in England; and also gave him strong letters to the Bishop of London, urging the propriety of his ordaining so exemplary a person, and to various other persons, among whom was Mr Murray, the author of the little volume before us, in which it appears; and a very interesting document it is. All honour to Admiral Fairfax Moresby! We have seldom seen more moving traits of unaffected and unassuming goodness than this volume contains, on his part. He cannot yet know that the public is thus made acquainted with them.

On Saturday the 16th October 1852, after an absence of twenty-six years, spent at Pitcairn's Island, this excellent person arrived in London. What a Babylon it must have seemed to one so long accustomed to the profound silence and solitude of Pitcairn! We ourselves saw him, and sate beside him for some time in the month of

November. He was indeed an interesting stranger—very modest, and with a sort of sad and stern simplicity, with a dash of rough quaintness in his manner, which comported well with the life he had led, and to which it was evident he pined to return. He looked the age he was, viz. fifty-three. His features were characterised by a quiet decision; and he spoke with gravity and deliberation. Nothing seemed to *surprise* him—the result of a long life of anxiety, suffering, and labour. None of the attractions, says a friend, or absorbing topics of interest—not even the great Duke's funeral, which he witnessed—seemed to excite him. So sustained, and built up, and built round by previous experience of wonders and escapes amidst the battle of life was this wonderful man, that he had literally reached the point of *Nil admirari*!

IS ORDAINED BY THE BISHOP OF LONDON.

The Bishop of London, yielding cheerfully to the strong concurrent testimony of Admiral Moresby, and many others who had enjoyed ample opportunities of learning the character and claims of Mr Nobbs, during a long career of twenty-six years at Pitcairn's Island, acceded to his request to be admitted to holy orders. On the 24th October 1852, he was ordained deacon in the parish church of Islington, by the Bishop of Sierra Leone, under a commission from the Bishop of London, who himself ordained him priest at Fulham Church on the 30th November; his description, in the Letter of Orders, being "Chaplain of Pitcairn's Island." He was warmly welcomed and hospitably entertained by the greatest and best in the land; and a number of them subscribed towards raising a little fund for defraying the expense of his return to Pitcairn, and his outfit—a service of communion-plate, and also various useful articles for the inhabitants, a bell for the church, two or three clocks, medicines, clothing, labourers' and carpenters' tools, simple articles of furniture, cooking utensils, and

stores of provisions.* These benefactors of the distant little community wisely determined to send them such articles only as shall contribute to their comfort, without communicating a taste for luxury; than which last, nothing could be more absurd or cruel. Since Mr Nobbs left this country, we may mention that an excellent little church-organ has been despatched to the pastor—we must now call him the chaplain—of Pitcairn, set to such of our plain and hallowed old English chants and psalm tunes, as he appeared, when in this country, best to like. By this time, it may be that our noble evening hymn, which is one of them, has ascended from that little rock to heaven's gate, a grateful offering!

The Society for Promoting Christian Knowledge granted £100 towards the fund for the purpose above mentioned, and the Society for the Propagation of the Gospel placed him on its list of missionaries, with a salary of £50 a-year. In short, all parties who became acquainted with him during his two months' stay, and with his story, seemed to vie with each other in paying attention to him, and exhibiting their interest by their liberality. At the Admiralty he experienced, through the Duke of Northumberland, and other eminent functionaries, the utmost kindness, and assurances of the watchful interest with which the small settlement should ever be regarded there; and the Directors of the Royal Mail Steam Navigation Company provided him with a free passage in the *La Plata* to Navy Bay.

HIS INTERVIEW WITH THE QUEEN AND PRINCE ALBERT.

It was a matter of reasonable ambition to the Pitcairn chaplain, before quitting England for ever, to be admitted to the presence, though for but a moment, of his queen; and as

* "H.M.S. *Virago*," says Mr Murray (p. 85, note), "left, calling for Pitcairn, in January 1853, having on board singing-birds, rose-trees, myrtles, &c., for the islanders."

her Majesty's interest in her distant subjects, especially as connected with the spread of Christianity, is well known, and the humble chaplain of Pitcairn had made many friends in high quarters, his wish was gratified. On the 15th December 1852, two days before he quitted England, the Royal Fairy conveyed him, by appointment, to Osborne. He was first introduced into the presence of the Prince, who took an evident interest in him, asking a great many questions concerning Pitcairn and its people, and appearing greatly pleased with his answers. In a letter dated the next day, to the Rev. Mr Murray (the most hospitable and zealous of his friends), through whose kindness it is now lying before us, he speaks of this as "the eventful day! * * * Prince Albert was very urbane, and asked me many questions about our island, and appeared much pleased with the answers I gave him. He then inquired what he could do for the community? I said 'her Majesty's community had supplied us with all we had need of at present; but that if he would present us with her Majesty's picture, including himself and the royal children, we should consider it a great favour.'† He smiled, and said I should have it. After a little more conversation, I saw he was designing to withdraw, and not a word had been said about seeing her Majesty! No time was to be lost; so I screwed up my courage, and said, 'Will your Royal Highness permit me to pay my duty to the queen?' He replied, 'I am just going to inquire if her Majesty will see you.' After a few minutes, I went into the room where her Majesty was;" and worthy Mr Nobbs proceeds to say, that he was instantly set at ease by the affable condescension of her Majesty. We regret that he has not left any written account of this interesting

† "This highly-valued gift," says Mr Murray, "was taken out in February 1853, in H. M. sloop *Rattlesnake*, Captain Trollope, the commander, being instructed to leave it in the charge of the commander-in-chief in the Pacific, for conveyance to Pitcairn."—Pp. 219, 220.

interview, for the worthy chaplain of Pitcairn had a little world of matters to attend to during the few remaining days of his stay in England. We have reason, however, to believe that the Queen exhibited a lively interest in his account of this distant family of her subjects, who, by this time, no doubt, have heard from their chaplain's own lips, what her Majesty asked and said of them. He received pleasing little mementos from the ladies-in-waiting, and other distinguished persons in attendance, and so took his departure from the residence and presence of her Majesty of England, to commence his ten thousand miles' journey.

RETURN TO PITCAIRN.

He sailed from Southampton in the *La Plata* on the 17th December, and reached Valparaiso in safety on the 12th February. A letter from him is lying before us, dated Valparaiso, 6th March, where he was waiting for the *Portland* to convey him to Pitcairn. "Oh, how I wish," says he, "to be at home!" He was then dividing clerical duty with the chaplain of Admiral Moresby at the church on shore, and also on board the man-of-war stationed there. He says that he had "a sufficiency of money to meet his expenses, and a trifle to spare, without trenching on my salary (£50 a-year), which I shall endeavour to preserve intact for the benefit of my dear wife and children, whom God preserve!" He complains sadly, however, of the expenses of passing the formidable Isthmus of Panama. It cost him £50. There a dismal mischance befel him; he lost the box containing his communion-plate. "Oh, what anxiety of mind its absence cost me! and, I believe, this was the exciting cause of the fever by which I was attacked." Fortunately, however, after a week's suspense, the precious box was recovered, thanks to the indefatigable exertions of Mr Perry, the British consul at Panama. After many fervent expressions of piety and gratitude towards his friends and well-

wishers in England, he concludes by hoping that his next letter will be dated Pitcairn's Island, when the thanks of the community will be appended to his own.

"From Valparaiso," says Mr Murray, towards the close of his little history, "should all go on prosperously with Mr Nobbs, Admiral Moresby will convey him to Pitcairn in the *Portland*, and the islanders will probably welcome him home before the end of March. May it please God to guide him, in health and safety, to his distant flock! Who can adequately imagine the scene which will be presented on his landing among his friends in the island, to be parted from them no more on this side the grave!" * We can picture to ourselves, on reading this passage, the scene to which we formerly alluded of their reluctant parting with their pastor to come to England—to encounter the dangers of twenty thousand miles' travelling—perhaps never to return—following him down to the water's edge, embracing and sobbing over him; and it may be that he said to them in faltering tones, and in the moving language of the Apostle Paul on a similar occasion—"What mean ye to weep, and to break my heart?" †

THE PASTOR'S PEOPLE—WITH A GLIMPSE OF PITCAIRN STATISTICS.

The number of persons now living on this little island is one hundred and seventy—viz., eighty-eight males and eighty-two females. When the nine mutineers established themselves there, they divided the island into as many parts, which are now subdivided into twenty-two, that being the number of families. Misunderstandings now and then arise on the subject of boundaries, as was the case in patriarchal times; but those misunderstandings engender no animosity, and are soon settled by the chief magistrate and the two councillors; for, as we have seen, such august functionaries have for several years existed in this little community! The chief magistrate is elected on the

* P. 221.

† Acts, xxi. 13.

first day of the new year, by a general vote of all males and females eighteen years old; but if any of either sex be married under that age, they are entitled to the suffrage. On the same day the two councillors are chosen, one by the magistrate, the other by the people. The present chief magistrate is a son-in-law of Mr Nobbs. His office is rather shunned than coveted; and sometimes exemption is purchased by killing a hog for the public good. Should any dispute arise which neither the magistrate nor he and the two councillors can settle, a jury of seven is called to decide it; and if it be so surpassingly knotty as to defy the efforts of the seven sages, it stands over till the arrival of a British man-of-war, against whose decision there is no appeal—a fact not very pleasing to the gentlemen of the long robe practising in the privy council, to whom, doubtless, a crumb from Pitcairn would, in these times, be far from unacceptable. During the interval—that is, till the arrival of the Naval Court of Appeal—"the matter drops, and no ill feeling remains; for it is a principle with them not to *let the sun go down upon their wrath*."* Happy Pitcairners! would your border were enlarged, and one could come and cast in one's lot with you!

The powers of the magistrate are pretty fairly defined, but of a simple nature. So are the public laws, the principal of which are as follow:—As to *landmarks*, the first duty of the new magistrate, and that on the day of his election, is, with a competent number of the heads of houses, "to visit all landmarks on the island, and replace those that are lost. As to *spirits*, or *intoxicating liquors* of any kind, their purchase from ships is peremptorily forbidden, except under a very strict condition—*i. e.*, for medicinal purposes alone. No female is to go on board any foreign vessel of any description, without the magistrate's permission, who must either accompany her on board, or appoint four men to do so. In the matter of "The Public Anvil," &c., the law is as follows:

* P. 133.

"Any person taking the public anvil, and public sledge-hammer from the blacksmith's shop, is to take it back after he has done with it; and in case either should get lost through neglect to do so, the loser is to get another, and pay a fine of four shillings." And as to *money*, its equivalents are these:—

	s.	d.
One barrel of yams,	8	0
" " sweet potatoes,	8	0
" " Irish ditto,	12	0
Three good bunches of plantains,	4	0
One day's labour,	2	0

A shilling, or its equivalent as above, is to be paid for the education of each child per month, between the ages of six and sixteen years; if Mr Nobbs' assistant attend instead of Mr Nobbs, the former receives the salary; and be it observed, that as Mr Nobbs is godfather to many of the children, all of *them* he instructs gratuitously. In respect of CATS—if ours knew the store set by them in Pitcairn, few ships bound for the Pacific would quit our ports without more having sneaked on board than had been bargained for, or the captain was aware of! Thus stands the law:—"If a CAT be killed without being *positively detected* in killing fowls, however strong the *suspicion* may be, the person killing such cat is obliged, as a penalty, to destroy THREE HUNDRED RATS! whose tails must be submitted for the inspection of the magistrate, by way of proof that the penalty has been paid."† The stringency of this law is referable to the great number of rats in the island, which do much damage to the sugar-canes.‡ FOWLS are toe-marked; and if one be discovered destroying yams or potatoes, the owner of the plantation may shoot the fowl, and retain it for his own use; and may also demand of the owner of such fowl the amount of powder and shot so expended, as well as the fowl. As for a FIG, if he get loose and commit depredation, his case may be submitted to the magistrate; taken from him to a jury of seven; and finally to the captain of the next man-of-war coming to the island!

† P. 227.

‡ P. 85.

In features, dress, manners, and appearance, the Pitcairners seem to resemble the inhabitants of one of the better order of our own villages; but some are rather darker than Europeans, partaking of their half Otaheitan descent. As for dress, the men wear short trousers, coming down to within two or three inches of the knee, a shirt, and a cap or hat; shoes and stockings being reserved for Sundays. They are, however, badly off for clothes, depending on the precarious supply afforded by ships touching at the island. The women wear a petticoat, from the waist downwards; and over that a loose gown, with a handkerchief sometimes thrown over their shoulders. A wreath of small white fragrant flowers, with others of a bright red, is often worn round the head; the hair being worn in bands, and twisted in a very becoming manner into a knot behind. "Though," says Captain Piper, of H.M.S. *Tagus*, "they have had the instruction of only their Otaheitan mothers, our dressmakers in London would be delighted with the simplicity, and yet elegant taste, of these untaught females." As we have seen that these young creatures are finely formed and handsome, their appearance must be both engaging and picturesque.

In the year 1850 the inhabitants of Pitcairn realised the truth of the old adage, that it is an ill wind that blows no one any good. Five gentlemen, one of them Mr Brodie, who afterwards published a very interesting account of his stay in the island, landed on the island, whose ship was blown off during the night, leaving them prisoners for a period of three weeks! They had nothing but the clothes they wore—with the exception of one, the Baron de Thierry, who, being of a musical turn, had a tuning-fork with him. He proposed to teach his hospitable hosts music, noticing how imperfectly they got through the vocal parts of divine service. They made remarkably rapid progress, being passionately fond of music; soon learning, as a visitor in August last testified, "to sing in parts beautifully."

He adds, that he accompanied the chaplain of the ship to the island on Sunday the 8th August; "the hymns were sung in regular parts by the whole congregation. I doubt much whether any church in England, excepting cathedrals, can boast of such a good choir." Imagine them, good reader, on Sunday next, the 5th instant, perhaps singing to the accompaniment of their organ, and with their beloved chaplain in the reading-desk and pulpit!

Fearing a dearth of water which would now appear to have been chimerical, the British Government, in the year 1831, removed the whole community, then only eighty-seven in number, to Otaheite, when Queen Pomare, since become a historical character, received them with great kindness, though herself harassed, at the time, by civil war. The licentious manners of the place disgusted almost all the virtuous visitants from Pitcairn; but some few were overcome by the temptations to intemperance. The unhealthiness of the climate then carried off twelve by sickness, and five more died almost immediately after their return. It is to be regretted that humanity should have been so hasty on this occasion, and to be hoped that such a step will not be taken again without grave consideration. The inhabitants have ever since expressed their deep sorrow at having been removed, and their passionate love of home, from which they will never again be willingly severed. One of their 'Records' states that, within three months after their removal to Tahiti, on one or two of their number returning to Pitcairn, "During our absence, our hogs have gone wild and destroyed our crops; and after our return, we employed ourselves in destroying the hogs."*

Though the climate is generally charming, the island is subject to be visited by terrible storms. One is recorded as having burst over it on the 16th April 1845, occasioning extreme terror to the inhabitants, and devastation. What a scene! Thunder

bellowing and lightning flashing incessantly over the desolate little rock—a deluge of rain falling—the hurricane howling around, and tearing down the precious earth from the rocks into the sea—uprooting, and casting into the roaring and foaming ocean, three hundred cocoa-trees. A yam ground, with a thousand yams, entirely disappeared. Several fishing-boats were destroyed: all the plantain patches were levelled, four thousand plantain trees being destroyed, the one-half in full bearing, the other designed for the year 1846: “So that,” continues the Record, “this very valuable article of food we shall be without for a long time. The fact is, that from this date until August,” *i. e.*, four long wearisome months—“we shall be pinched for food!” How bore the terrified little community this dispensation? Let us hear, for the Record thus proceeds: “But God tempers the wind to the shorn lamb: and we humbly trust that the late monitions of Providence—namely, drought, sickness, and storm, which severally have afflicted us this year—may be sanctified to us, and be the means of bringing us, one and all, into a closer communion with our God. May we remember the rod, and who hath appointed it; always bearing in mind, that our heavenly Father doth not willingly afflict the children of men.” We envy not him, or her, who can read this without sympathy and admiration.

Here is a letter from one of the Pitcairn women, which, in our opinion, cannot be surpassed in the solemn simplicity and beauty of its piety and gratitude. It is from *Miriam Christian*, and addressed to the Rev. Mr Armstrong, chaplain of H.M.S. Basilisk, who had been very kind to them all:—

“PITCAIRN’S ISLAND, SOUTH PACIFIC OCEAN,
“Lat. 25° 4’ S., Long. 130° 8’ W.
“Sept. 26, 1844.

“REV. AND HONOURED SIR,—Please to accept my humble thanks for the interest you are pleased to take in our welfare, and also for the presents you and our other friends in Valparaiso have sent us; and may they and you be rewarded a thousandfold both in a

temporal and spiritual sense. And *may the grace of our Lord Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with you all.* Amen.

“I am, Rev. Sir, your grateful servant,
MIRIAM CHRISTIAN.”

The community, as we learn from Admiral Moresby,* “are strictly brought up in the Protestant faith, according to the Established Church of England;” and Mr Nobbs stated, in a sermon which he preached in London shortly before his return, that “there is but one form of church government, that of the Church of England. The Holy Bible and the Church Prayer-Book are their chief rules of guidance; their motto—‘One Faith, one Lord, one Baptism.’”†

Divine service is performed in the school-house, a substantial building, fifty-six feet long by twenty wide, with a pulpit at one end. It is amply supplied with desks, forms, slates, books, and maps.

These worthy people, happy in so many other respects, are by no means exempt from the ordinary ills of humanity, and suffer occasionally very severely from prevalent illness, chiefly the influenza, and also more formidable diseases. There is a painfully interesting account given of the death, perfectly resigned, and even happy, of one of the women, from cancer. On all these occasions, for now a quarter of a century, this exemplary man has acted both as physician and chaplain.

How long this singular and interesting community may be able to remain at Pitcairn, is problematical; for Admiral Moresby tells us, in August 1852, that “the crops on the tillage-ground begin to deteriorate; landslips occur with each succeeding storm; and the declivities of the hills, when denuded, are laid bare by the periodical rains.”† Symptoms in reality appear of an evil sometimes chimerically apprehended at home—population pressing on the means of subsistence. It will thus become the duty of the British government to deal prudently and

* P. 261.

† P. 199.

tenderly with the little community; not tearing them all, with bleeding hearts, from the land of their birth, and the seat of their sweetest sympathies and associations, but assisting them from time to time, as they themselves perceive the inevitable necessity for so doing, to migrate to the numerous islands in that remote locality: each family, and each member of it, becoming a radiating centre of Christian civilisation. At present, they themselves fondly declare, but it must be often with a heavy sigh, as they behold their steadily diminishing resources, that "they will not remove elsewhere whilst a sweet potato remains to them;" and as for their chaplain and pastor, he is rooted to the spot. As he told Mr Murray, "as long as two families shall remain at Pitcairn, I will remain also."

We know not how our readers may have been affected while perusing the foregoing pages, but we ourselves, in writing them, have felt as though freshened and cheered in spirit, by a brief sojourn in this little paradise in the far Pacific; as though we had glided for a while out of the glare and hubbub of the great world—its fierce rivalries, ambitions, covetousness, and ostentation—and been at peace in Pitcairn. It is a small type of a State, having its laws and constitution appropriate to its position and exigencies; but at present, almost necessarily free from those subtler and fiercer temptations which so incessantly, and only too successfully, assail highly civilised communities. Both, however, have had the pure light of Revelation to guide them—with what different results, while man conjectures, God *knows*. But no thinking person can read the history of Pitcairn without being profoundly affected by contemplating the results flowing directly and indubitably from the presence of the Holy Volume, in which is enshrined the revelation of God to man. It sufficed, indeed, to *make the rough places smooth, and made the wilderness blossom as the rose*.

We cannot part with the little vol-

ume,* to which we have been exclusively indebted for so much instruction and gratification, without again expressing our thanks to its excellent author. We feel as if we had been suddenly led by him out of a thick cloud into the blessed sunshine, and walked hand in hand with him through a sort of happy valley. It is a book written without pretence of any kind, but breathing throughout, as we have already said, a spirit of manly piety and benevolence. The style is plain and vigorous—admirably adapted for its writer's purpose. It is calculated to do great good among all classes; and as for sailors, had we our wish, half-a-dozen copies should be presented to every ship in Her Majesty's service, that Jack might see what comes of mutiny, and that Captains and Admirals may see how their brethren manage matters in the Pacific.

Mr Murray truly states, in his preface, that "the eventful history connected with Pitcairn, proves that real life may be as romantic as fiction." We have in these few pages the romance of reality, and many shadowings in the annals of this distant speck amidst the waters of the Pacific, of the grandest truths which can concern nations or individuals, as relating to the sources of vice and virtue, with their attendant misery or happiness.

And thus we say, in a kindly spirit, Adieu to the *Paradise in the Pacific!*

NOTE.

Good Admiral Moresby, having resigned the command in the Pacific, recently returned to England, and was welcomed by all who knew, and loved, and admired him: that is, by all who either knew or had heard of him: the University of Oxford, at the Commemoration in June 1854, con-

* It contains several plates, including an excellent daguerreotype likeness of Mr Nobbs, and another of John Adams, the last of the mutineers, and finally the patriarch of Pitcairn. There are also several views of the island, and of the houses, school-house, &c. &c.

ferred upon him the flattering distinction of an honorary D.C.L.

On Friday, 15th April 1853, he sailed in the Portland from Valparaiso to Pitcairn, conveying to his little island home Mr Nobbs and his two female children. On Sunday, the 15th May, they came so near the island as to be able to see the poor Pitcairners coming out of church, and preparing, on hearing three guns fired—which indicated that the ship was bringing to them three passengers—to launch their whale-boat. In half an hour's time it was alongside, followed by a canoe, in which were old Adams, son, and grandson. Their rapture on again seeing their pastor, and an ordained clergyman, may be imagined. The Admiral and several others accompanied Mr Nobbs to the island, and were grieved greatly on seeing how ill and poor the hapless inhabitants were, whom a failure of their crops had driven, for months, to subsist on pumpkins, berries, cocoa-nuts, and beans. Poor souls, they all appeared *so* sad, thin, and care-worn! Shortly afterwards the Admiral returned to the island, having, in passing, been met by a boat from it, containing the melancholy news that four-fifths of the inhabitants were prostrated by influenza!

It is clear that the island is no longer capable of supporting this interesting and primitive community; who, become sensible of the fact, have petitioned to be removed, by the British Government, to some not far-distant, but salubrious spot, exempt from the visitation of famine. They themselves indicated Norfolk Island,—as soon as it should have completely ceased to be a penal settlement; but their removal thither is at present uncertain, owing to unavoidable delays in the complete evacuation of it by its present criminal occupants. Doubtless steps will be taken, as

soon as practicable, to secure the permanent comfort of these our distant, humble, and interesting fellow-countrymen.

On the 27th July 1853, the islanders transmitted, through Admiral Moresby, a present of "a small chest of drawers, of their own manufacture, of island." "Our means are very limited, and our mechanical skill also; and we will esteem it a great favour, if your Majesty would condescend to accept of it as a token of our loyalty and respect." Need we say, that our good Queen did so? and "very graciously. I am further to state," said the minister, "that her Majesty expressed her gratification at receiving this mark of loyalty and esteem from her subjects in Pitcairn's Island."

A sad accident happened to several of the islanders on the 26th January 1853. Intending to fire a parting salute to H.M. Steamer Virago, which had come to them on an errand of kindness, Matthew M'Coy, the Chief Magistrate, and two others, were loading their famous old gun from the Bounty, and used as a rammer an old rafter, on the top of which was a nail. This caused an explosion, blowing the three men to a great distance, and so seriously injuring the Chief Magistrate, M'Coy, that he died within twelve hours of his arm being amputated. He was a grandson of William M'Coy, the mutineer, and about thirty-five years of age, and was married to a sister of Mr Nobbs, and has left a large family. The old gun has been since spiked, and so silenced for ever.

These foregoing, and other interesting circumstances, are communicated to the public in a fourth edition of Mr Murray's interesting work—being the third which has appeared since this article was written. It was at the house of this gentleman that the author of these papers, at the earnest request of Mr Nobbs, was introduced to him.

UNCLE TOM'S CABIN.*

LET us imagine one of our critical successors of a century hence, that is, in the month of October 1853, sitting musingly before a copy of a work called *UNCLE TOM'S CABIN*, which a few days previously he had taken down by chance from one of the least-used shelves of his library. May one also amuse one's imagination by a picture of the possible state of things then existing on the other side of the Atlantic, by the light of which our shadowy friend of 1853 has read the work which his substantial predecessor of 1853 has just laid down?

—The present United States of America, after having been, perhaps, more than once split asunder and soldered together again—or the whole, or a large portion, voluntarily reannexed to the mother country, and by-and-by again detached—after these and other, possibly more or less sudden, violent, and bloody vicissitudes—may have become a great Empire, under the stern, but salutary, one-willed sway of the Emperor of America: his majesty a jet black, who had shown consummate and unexpected high qualities for acquiring and retaining the fear and submission of millions of the stormiest tempers of mankind; but his lovely empress a white. He has an immense army, devoted to his person and will, composed of men of every complexion—from black, through copper middle-tints, down to white; and correspondingly diversified are his banners, but black, of course, the predominant: a quadroon being commander-in-chief. As for his majesty's civil service, he

has a coal-black chancellor, equally at home in the profoundest mysteries of white and black letter; a mulatto minister of instruction, and a white secretary of state; black and white clergy, and a similarly constituted bar—here a big black face frowning out of a white wig, and there a little white face, grinning out of a black wig, with black and white bands, and gowns varied *ad libitum*. And the laws which they are concerned in administering, accord with these harmonious diversities—it being, for instance, enacted under heavy penalties, that no black shall, by gesture, speech, or otherwise, presume to ridicule a white because of his colour, nor, *vice versâ*, shall a white affect to disparage a black because of his complexion; that the emperor and empress shall always be of different colours, and that the succession to the throne shall alternate between black and white, or mulatto, members of the imperial family. By this and other provisions have been secured a complete fusion between North and South, between black and white, glitteringly typified by intermingled gems in the imperial crown; the central one being the identical black diamond that figured in the famous Exhibition in Great Britain in 1851, and presented to the emperor by one of the descendants of her Majesty Queen Victoria, then on the British throne! “To this complexion” shall it be that matters will have “come at last?”

Or will our sturdy cousins of 1853 be still republican, a united republic, but with offices, honours, rights, and

* *Blackwood's Magazine*. October 1853.

“*Uncle Tom's Cabin: A Picture of Slave Life in America*. By HARRIET BEECHER STOWE. 1852.”

“*The Key to Uncle Tom's Cabin: Presenting the original Facts and Documents upon which the Story is founded*. By HARRIET BEECHER STOWE, author of *Uncle Tom's Cabin*. 1853.”

privileges, equally distributed, as in our fancied empire, among those of every shade of colour? Or, after a fearful succession of struggles between black and white, *** the *** is predominant; *** slavery, after a *** sang—*** or a noble spontaneous ***†

From a preliminary dissertation, prefixed to the book, our critic of 1953 learns that it excited, almost immediately on its appearance, a prodigious sensation among all classes, both in Europe and America; that both sexes, high and low, young and old, literate and illiterate, vulgar and refined, phlegmatic and excitable, shed tears over it, and wrote, talked, and even ranted, about it everywhere; that, within a few months' time, impressions of it were multiplied by millions, and in most languages of the civilised world. That its writer, an American woman, immediately came over to England, and made her appearance in public assemblies, called in honour of her; and she was also "lionised" [a word explained, in a long note, as indicating a custom prevalent in that day, among weak persons, of running after any notorious person weak enough to appear pleased with it] among the fashionables and philanthropists of the day, but preserved, nevertheless, amidst it all, true modesty of demeanour and silence amidst extravagant eulogy. Inflamed by curiosity, our shadowy successor sits down to peruse a work—then possibly little, if ever, mentioned—-anxious to see what could have produced such a marvellous effect, in the middle of the intelligent nineteenth century, on all classes of readers; and whether it produced permanent results, or passed away as a nine days' wonder. Having at length closed the pages of "Uncle Tom's Cabin," and judged it according to the critical canons of 1953, will he deem it adequate to have produced such effects? *What estimate will he form of our intellectual calibre?*

We cannot tell, and shall not attempt to conjecture. Dismissing, therefore,

† Here the MS. becomes unfortunately illegible for some lines.

but for a while only, the imaginary occupant of our critical chair a century hence, let us say for ourselves, that though our silence, and that of one or two quarterly contemporaries, may have excited notice, both in America and this country, we have been by no means indifferent spectators of the reception which this singularly successful book has met with; regarding it as one of those sudden phenomena in literature, even demanding a deliberate consideration of cause and effect. We apprehend no one will doubt that, to excite such attention and emotion among all classes of readers, in both hemispheres, as this work has excited, it must possess *something* remarkable; and what that is, it will be our endeavour to determine. We ourselves never read this work till within the last month, and then as a matter of mere critical curiosity, uninfluenced by the past excitement of others, and the favourable and unfavourable opinions which we heard expressed as to the merits of the work. If we could have been biassed at all, it would have been rather against, than in favour of, a writer who had been over-persuaded by her friends to come to this country, for the purpose of making a sort of public appearance, at the moment that admiration of her work was at fever height. Nothing could palliate such an indiscretion on the part of this lady's advisers, in the eyes of a fastidious Englishman, but the belief that she was a simple-minded, enthusiastic crusader against American slavery, considering that the totally unexpected celebrity of her work had afforded her an opportunity of accelerating a European movement, in a holy cause, by her personal presence. Criticism, however, ought not to be influenced by petty disturbing forces like these, nor will ours. We shall judge "Uncle Tom's Cabin" by its own intrinsic merits or demerits—occasionally looking for the light which she has thought proper to reflect upon it from its companion volume, "THE KEY."

"Uncle Tom's Cabin" is a remarkable book, unquestionably; and, upon

the whole, we are not surprised at its prodigious success, even as a mere literary performance; but whether, after all, it will have any direct effect upon the dreadful institution at which it is aimed, may be regarded as problematical. Of one thing we are persuaded—that its author, as she has displayed in this work undoubted genius, in some respects of a higher order than any American predecessor or contemporary, is also a woman of unaffected and profound piety, and an ardent friend of the unhappy black. Every word in her pages issues glistening and warm from the mint of woman's love and sympathy, refined and purified by Christianity. We never saw in any other work, so many and such sudden irresistible appeals to the reader's heart—appeals which, moreover, only a wife and a mother could make. One's heart throbs, and one's eyes are suffused with tears without a moment's notice, and without anything like effort or preparation on the writer's part. We are, on the contrary, soothed in our spontaneous emotion by a conviction of the writer's artlessness; and when once a gifted woman has satisfied her most captious reader that such is the case, she thenceforth leads him on, with an air of loving and tender triumph, a willing captive to the last. There are, indeed, scenes and touches in this book which no living writer that we know of can surpass, and perhaps none even equal.

No English man or woman, again, could have written it—no one, but an actual spectator of the scenes described, or one whose life is spent with those moving among them; scenes scarce appreciable by FREE English readers—fathers, mothers, husbands, wives, brothers, and sisters. We can hardly realise to ourselves human nature tried so tremendously as, it seems, is, after all, only faintly adumbrated in these pages. An Englishman's soul swells at the bare idea of such submission to the tyrannous will of man over his fellow-man, as the reader of this volume becomes grievously familiar with; and yet we are assured by Mrs Stowe that she has given us

only occasional glimpses of the indescribable horrors of slavery. To this part of the subject, however, we shall return. Let us speak first, and in only general terms, of the literary characteristics of the author, as displayed in her work.

Mrs Stowe is unquestionably a woman of GENIUS; and that is a word which we always use charily: regarding genius as a thing *per se*—different from talent, in its highest development, altogether and in kind. Quickness, shrewdness, energy, intensity, may, and frequently do accompany, and are often mistaken for, but do not constitute genius. Its divine spark is the direct and special gift of God: we cannot completely analyse it, though we may detect its presence, and the nature of many of its attributes, by its action; and the skill of high criticism is requisite, in order to distinguish between the feats of genius and the operations of talent. Now, we imagine that no person of genius can read "Uncle Tom's Cabin," and not feel in glowing contact with genius—generally gentle and tender, but capable of rising, with its theme, into high regions of dramatic power. This Mrs Stowe has done several times in the work before us—exhibiting a passion, an intensity, a subtle delicacy of perception, a melting tenderness, which are as far out of the reach of mere talent, however well trained and experienced, as the prismatic colours are out of the reach of the born blind. But the genius of Mrs Stowe is of that kind which instinctively addresses itself to the Affections; and though most at home with the gentler, it can be yet fearlessly familiar with the fiercest passions which can agitate and rend the human breast. With the one she can exhibit an exquisite tenderness and sympathy; watching the other, however, with stern but calm scrutiny, and delineating both with a truth and simplicity, in the one case touching, in the other really terrible.

"Free men of the North and Christians," says she, in her own vigorous and earnest way, "cannot know what slavery is. * * * From this arose a

desire," on the author's part, "to exhibit it in a living dramatic reality. She has endeavoured to show it fairly in its best and its worst phases. In its *best* aspect, she has perhaps been successful; but, oh! who shall say what yet remains untold in that *valley and shadow of death* that lies on the other side? * * * The writer has given only a faint shadow, a dim picture, of the anguish and despair that are at this very moment riving thousands of hearts, shattering thousands of families, and driving a helpless and sensitive race to frenzy and despair."

Without going further, the beautiful, accomplished, but ruined and heart-broken slave Cassy—the bought, abhorring, and ultimately discarded mistress of the miscreant Legree, and whose heart is full of despair and murder towards him—affords many instances of both kinds, the tender and the terrible. Her successor in the *affections*! of the monster, is the lovely young slave Emmeline, of but fifteen summers! and Cassy obtains a great ascendancy over her, winning her love by the story of her own indignities and bereavements.

"What use will freedom be to me?" says Cassy, when they are whispering together in their place of concealment, where they lie like a couple of hunted hares, momentarily hidden from the hounds—"Can it give me back my children, or make me what I used to be?"

"There was a terrible earnestness in her face and voice as she spoke. Emmeline, in her childlike simplicity, was half afraid of the dark words of Cassy. She looked perplexed, but made no answer. She only took her hand with a gentle caressing movement.

"Don't!" said Cassy, trying, to draw it away (observe, she only *tries*!), 'you'll get me to loving you! and I swore never to love anything again!'

"Poor Cassy! * * * I'll be like a daughter to you! * * * I shall love you whether you love me or not!"

"The gentle childlike spirit conquered. Cassy sate down by her, put her arm round her neck, stroked her

soft brown hair; and Emmeline then wondered at the beauty of her magnificent eyes, now soft with tears. 'O Emmeline!' said Cassy, 'I've hungered for my children, and thirsted for them, and my eyes fail with longing for them! Here, here!' she exclaimed, striking her breast, 'it's all desolate! all empty!'"

Of the terrible, we have a thrilling, indeed a sickening instance, in Cassy's frenzied determination to murder the fiend Legree, whose brandy she has drugged for the purpose—but we anticipate.

Occasionally, also, Mrs Stowe displays a fine perception of external nature—irradiating her inanimate scenes with the rich hues of imagination. At these, however, she generally looks through a sort of solemn religious medium. Here, for instance, is a startlingly suggestive picture. It is poor Uncle Tom, sitting at midnight, exhausted and heart-broken, during a moment's respite from the wasting and cruel inflictions of slavery, and reading his Bible by moonlight.

"* * * Tom sate alone by the smouldering fire that flickered up redly in his face.

"The silver fair-browed moon rose in the purple sky, and looked down, calm and silent, as God looks on the scene of misery and oppression—looked calmly on the lone black man, as he sate, with his arms folded, and his Bible on his knee. 'Is God here?' inquires he. Ah (proceeds the author), how is it possible for the *untaught* heart to keep its faith unswerving, in the face of dire misrule, and palpable unrebuked injustice? In that simple heart waged a fierce conflict: the crushing sense of wrong, the fore-shadowing of a whole life of future misery, the *wreck of all past hopes, mournfully tossing in the soul's sight, like dead corpses of wife, and child, and friend, rising from the dark wave, and surging in the face of the half-drowned mariner!* Ah! was it easy here to believe and hold fast the great password of Christian faith, that *God is, and is the REWARDER of them that diligently seek him?*"

Here, again, is the lovely smile of early morning flung over the monster Legree, poor Tom's brutal master, as he wakes from a foul debauch:—

"Calmly the rosy hue of dawn was stealing into the room. The morning star stood, with its solemn holy eye of light, looking down on the man of sin, from out the brightening sky. Oh, with what freshness, with what solemnity and beauty, is each new day born! as if to say to insensate man, 'Behold! thou hast one more chance! *Strive for immortal glory!*' There is *no speech nor language* where this voice is not heard; but this bold bad man heard it not. He awoke with an oath and a curse. What to him were the gold and the purple, the daily miracle of morning? What to him the sanctity of that star which the Son of God has hallowed as his own emblem? Brute-like, *he saw without perceiving*; and, stumbling forward, poured out a tumbler of brandy, and drank half of it. 'I've had a h—ll of a night!' he said."

'Twas somewhat different, that same morning, with his poor slave Tom, waking bruised, wearied, and well-nigh spirit-broken.

"The solemn light of dawn, the angelic glory of the morning star, had looked in through the rude window of the shed where Tom was lying; and, as if descending on that star-beam, came the solemn words, *I am the root and offspring of David, and the bright and morning star.* * * * Without shuddering or trembling, he heard the voice of his persecutor as he drew near. 'Well, my boy,' said Legree, with a contemptuous kick, 'how do you find yourself? Didn't I tell yer I could larn yer a thing or two? How do yer like it, eh? How did yer whaling'—he had been fearfully flogged over-night—'agree with yer, Tom? An't quite so crank as yer was last night? Ye couldn't treat a poor sinner now to a bit of a sermon, could yer, eh?'

"Tom answered nothing.

"'Get up, ye beast!' said Legree, kicking him again. This was a difficult matter for one so bruised and

faint; and, as Tom made efforts to do so, Legree laughed."

These passages, taken at random, are highly characteristic of the author of "Uncle Tom's Cabin," in more ways than one, as will by-and-by be shown.

Up and down the book are to be found strewn, as it were, carelessly, striking and grand reflections, evincing the deeply thoughtful moralist, and profoundly convinced believer.

"True—there was another life—a life which, once believed in, stands as a solemn significant figure before the otherwise unmeaning ciphers of time, changing them to orders of mysterious unknown value."

We have not met with this idea before; and it is very striking.* Again—

"The gift to appreciate, and the sense to feel the finer shades and relations of moral things, often seems an attribute of those whose whole life shows a careless disregard of them. Hence Moore, Byron, Goethe, often speak words more wisely descriptive of the true religious sentiment, than another man whose whole life is governed by it. In such minds, disregard of religion is a more fearful treason—a more deadly sin."

Again—

"Oh! how dares the bad soul to enter the shadowy world of sleep!—that land whose dim outlines lie so fearfully near to the mystic scene of retribution! * * *

"Legree felt a secret dislike to Tom—the native antipathy of good to bad. He saw plainly that when (as was often the case) his violence and brutality fell on the helpless, Tom took notice of it; for so subtle is the atmosphere of opinion, that it will make itself felt without words; and the opinion, even of a slave, may annoy a master. * * *

"What a sublime conception is that of a last judgment! * * * A righting of all the wrongs of ages!—a solv-

* The author, shortly after the appearance of this paper, received an anonymous note, unfortunately mislaid, proving that this idea is taken from the writings of a living English author.

ing of all moral problems, by an unanswerable wisdom."

One of these problems—perhaps the greatest at present insoluble by man—torments poor Tom.

"It was strange that the religious peace and trust which had upborne him hitherto should give way to tossings of soul and despondent darkness. The gloomiest problem of this mysterious life was constantly before his eyes: souls crushed and ruined, evil triumphant, and God silent! It was weeks and months that Tom wrestled, in his own soul, in darkness and sorrow."

Which of us cannot here sympathise with the poor, bruised, and bleeding black?

Yet once more.

"Is not this truly *feeling after God, and finding him*? And may we not hope that the yearning, troubled, helpless heart of man, pressed by the insufferable anguish of this short life, or wearied by its utter vanity, never extends its ignorant pleading to God in vain? Is not the veil which divides us from an almighty and most merciful Father, much thinner than we, in the pride of our philosophy, are apt to imagine? And is it not the most worthy conception of Him, to suppose that the more utterly helpless and ignorant the human being is that seeks His aid, the more tender and condescending will be His communication with that soul?"

Character is often drawn by our author with delicate discrimination; and, at the same time, she almost as often exhibits a poverty and crudeness in dealing with such subjects, which would be surprising, but that it is evidently referable to haste and inattention. Her mind, too, is so intent upon the great, noble, and holy purpose of her book, that she often does not give herself time to develop or mature her own happiest conceptions. The momentary exigencies of her story require the introduction of an additional figure; on which, having paused for a moment to call up the image of one before her mind's eye, she forthwith gives a few strokes, possibly intend-

ing, at a future time, to complete and retouch them; but that future time never comes, for she has got into new scenes, and moves on, with new characters and associations crowding round her. In this respect her book may be compared to the *studio* of a great painter, where the visitor sees some pictures in all the splendour of their completeness, and others in various stages of incompleteness—some exhibiting the master's hand, and others that of a hasty and unskilled workman; all which may, perhaps, be visibly accounted for by the painter's being absorbed by some masterpiece, itself, however, only approaching completeness. We feel bound, nevertheless, to express our opinion that an additional solution of the matter is to be found in her probably limited range of observation of actual life, at all events of such life as Europeans can appreciate. In delineating the character of slaves and the "slave-trader, kidnapper, negro-catcher, negro-whipper," as she herself fearfully groups them, she handles her pencil with the confident ease of a master. "The writer," says she herself, at the close of her work, "has lived for many years on the frontier line of slave states, and has had great opportunities of observation among those who formerly were slaves." To her sadly-familiar eye "there are some things about these slaves which cannot lie: those deep lines of patient sorrow upon the face—that attitude of crouching and humble subjection—that sad habitual expression of hope deferred in the eye—would tell their story, if the slave never spoke." We shall, however, presently have ample opportunities of showing Mrs Stowe's profound appreciation of the negro character; one of a far more composite construction than any but a philosopher might suppose, and also of great interest to those who are contemplating the future of the negro race, as a large, though many may unhappily deem it an unsightly, element, in ascertaining the fates of the human family. "This is an age of the world, truly," says our author, "when na-

tions are trembling and convulsed. A mighty influence is abroad, surging and heaving the world as with an earthquake. And," she asks, "is America safe? Every nation that carries in its bosom great and unredressed injustice, has in it the elements of this great convulsion."

While the pathos of Mrs Stowe is deep and pure, her humour and satire are genuine and racy, but quiet. Gloomy as is the prevalent tone of her work, her reader's feelings are discreetly relieved by many little touches of quaint dry drollery. Master Shelby, for instance, is a sharp youth of thirteen, the eldest son of Uncle Tom's first and kind-hearted master; and he has taken it in hand to teach Tom, old enough to be almost his grandfather, his letters. Chloe is Uncle Tom's wife, and the cook of Mr Shelby; and it seems that she is a capital cook, to boot, as Master Shelby has found out. He often visits Uncle Tom's cabin, to teach old Tom his letters—and also partake of certain good things which Aunt Chloe used to prepare for her favourite; who displays no little art in inflaming her ambition by faintly undervaluing the culinary skill of one of her rivals, a cook at a neighbouring plantation. The whole scene is admirably sketched, and forms one of the earliest in the work. Excited to the utmost, she prepares a delicious supper for Master George, who, it will be seen, does it full justice.

By this time Master George had arrived at that pass to which even a boy can come (under uncommon circumstances)—*i. e.*, when he could not eat another morsel; and, therefore, he was at leisure to notice *the pile of woolly heads and glistening eyes which were regarding their operations hungrily from the opposite corner.* [Who does not see the turgid youngster?—But one does not dislike him; for] 'Here!—you, Mose! Peto!' [said he, addressing the young sables—the children of Uncle Tom and Aunt Chloe]—breaking off liberal bits, and throwing them at them—'you want some don't you?'

One Black Sam, a friendly fellow-slave of Uncle Tom's, is unconsciously caught in the attitude of deeply considering the interests of number One, as soon as he hears of the departure of poor Uncle Tom, who has been suddenly sold to another master, leaving a vacancy in his somewhat confidential office, which *some one* must supply. "One touch of" *selfishness* "makes the whole world kin"—and here is how it strikes our black brother.

"Never did fall of any prime minister at court occasion wider surges of sensation than the report of Tom's fate among his compeers on the place. It was the topic in every mouth, everywhere; and nothing was done in the house or in the field, but to discuss its probable results.

"Black Sam, as he was called, from his being about three shades blacker than any other son of ebony on the place, was revolving the matter profoundly in all its phases and bearings, with a comprehensiveness of vision, and a strict look-out to his own personal wellbeing, that would have done credit (says good, sly Mrs Stowe) to any white patriot at Washington.

"*'It's an ill wind dat blows nowhar,—dat ar a fact,'* said Sam, sentimentously, giving an additional hoist to his pantaloons, and adroitly substituting a long nail in place of a missing suspender-button. 'Yes, it's an ill wind blows nowhar,' he repeated. 'Now, dar, *Tom's* down—wal, 'course der's room for some nigger to be *up*; and why not *dis* nigger?—dat's de idee! *Tom a-ridin'* round de country—boots blacked—pass in his pocket—all grand as Cuffee; who but he? Now, why shouldn't Sam?—*dat's* what I want to know!'"

There are, however, many indications throughout the work of the writer's humorous powers being checked and restrained, either purposely or unconsciously, as if from a severe sense of the purpose with which she writes—as though before her mind's eye was ever the bleeding heart of the negro. We have an indistinct recollection of more than one disposition, or rather

juxta-position, of persons and incidents most suggestive of *fun*: but they are suddenly discarded, the reader breathlessly following the grave and ardent writer, over whose pale countenance the smile had but furtively flickered for an instant, like a glance of moonlight on a gloomy sea. Here is one of the passages to which we allude. Mr St Clare and his heartless lackadaisical wife are conversing about his newly-acquired slave, Uncle Tom, for whom he feels no little regard; but she is speaking of him in a disparaging, contemptuous tone.

"Tom isn't a bad hand, now, at explaining Scripture, I'll dare swear," said St Clare. "He has a natural genius for religion. I wanted the horses out early this morning, and stole up to Tom's *cubiculum** there, over the stables, and there I heard him holding a meeting by himself; and, in fact, I haven't heard anything quite so savoury as Tom's prayer this some time. He put in for *me* with a zeal that was quite apostolic."

"Perhaps he guessed you were listening! I've heard of *that* trick before!"

"If he did, he wasn't very polite; for he gave the Lord his opinion of me pretty freely! Tom seemed to think there was decidedly room for improvement in me, and seemed very earnest that I should be converted."

"I hope you'll lay it to heart," said Miss Ophelia, who is the pious, simple-minded, conscientious, elderly spinster, and cousin of Mr St Clare."

How much of the pious, disinterested character of the poor slave, the heartless distrust of his mistress, the humorous, good-natured levity of his master, and the earnest goodness of Ophelia, does this quiet touch reveal to us!

On another occasion, Mrs St Clare, who has no more intellect or feeling than her thimble or thread paper, is conversing with her lovely little daughter Eva, who is pleading with her mamma on behalf of the poor little negress, Topsy, of whom more anon, and

* Is this word a suggestion from good Mrs Stowe's husband?

meekly suggesting the possibility of Topsy's being human! and consequently capable of improvement.

"Mamma, I think Topsy is different from what she used to be: she's *trying* to be a good girl."

"She'll have to try a good while before she gets to be good," said Mrs St Clare, with a careless laugh.

"Well, you know, mamma, poor Topsy! everything has always been against her!"

"Not since she's been *here*, I'm sure. If she hasn't been talked to' (not by the silly speaker, let our readers understand, but by good Miss Ophelia aforesaid, for whom poor Topsy has been *bought*! good-humouredly by Mr St Clare, simply to try whether moral and religious training can make anything of the little sooty gnome)†—and preached to, and every earthly thing done that anybody *could* do; and she's just so ugly, and always will be, you can't make anything of the creature!"

"But, mamma, it's so different to be brought up as I've been, with so

† Topsy—an incomparable sketch—excited at first sight no pleasurable sensations in good, starched Miss Ophelia. "'Now, Augustine (Mr St Clare), what upon earth is *this* for? Your house is so full of these little plagues already, that a body can't set their foot down without treading on 'em! I get up in the morning, I find one asleep behind the door, see one black head poking out from under the table, one lying on the door-mat; and they are mopping, and mowing, and grinning between all the railings, and tumbling over the kitchen floor! What on earth did you want to bring *this* one for?"

"For you to *educate*—didn't I tell you? You're always preaching about educating. I thought I *would* make you a present of a *fresh-caught specimen*, and let you try your hand on her, and bring her up in the way she should go! * * * The fact is, this concern(!) belonged to a couple of drunken creatures, that kept a low restaurant which I have to pass every day, and I am tired of hearing her screaming, and them beating and swearing at her. She looked bright and funny, too, as if something might be made of her; so I *bought* her (!) and I'll give her to you. Try, now—and give her a good orthodox New England bringing up, and see what it'll make of her!"

"Well—I'll do what I can," said Miss Ophelia; and she approached her new subject, very much as a person might be supposed to approach a black spider—supposing him to have benevolent designs towards it!"

many friends—so many things to make me good and happy; and to be brought up as she has been, all the time, till she came here!’

“‘Most likely,’ said Mrs St Clare, yawning. ‘Dear me! how hot it is!’

“‘Mamma, you believe, don’t you, that Topsy could become an angel, as well as any of us, if she were a Christian?’

“‘Topsy! what a ridiculous idea! Nobody but you would ever think of it! I suppose she could, though!’

“‘But, mamma, isn’t God her father, as much as ours? Isn’t Jesus her Saviour?’

“‘Well, that may be. I suppose God made everybody.—Where’s my smelling-bottle?’”

This is very masterly. It has a sort of rich stillness of satire, and, at the same time, a truthfulness and suggestiveness which make the reader first admire the writer’s acute perception of character and power of felicitous dialogue, and then pause and ponder the state of mind and feeling revealed—that of frivolous, ignorant, indifferent acquiescence!

The above extract incidentally indicates another excellence of Mrs Stowe. Her dialogue is almost always admirable; brief, lively, pointed, and characteristic—that is, when she does not, so to speak, crowd too much sail upon it, in her intense anxiety to be didactic and hortatory on the great subject on which her eyes are ever fixed. When she yields to the promptings of her own power over character and expression, she exhibits high dramatic capabilities. She perceives a fine *situation* with the intuition of genius, and inspires her characters with fitting sentiments, conferring upon them appropriate eloquence. Akin to this is the easy strength of her narrative. She hurries her reader along with her, breathless. The flight and pursuit of poor Eliza and her child—the incidents selected to heighten the interest in their fate—the introduction of Marks and Tom Loker, and their interview with Haley—their encounter at the rocky pass with George and his wife and child, are, in parts,

worthy of the pencil of ‘Sir’ Walter Scott: but, it must be added, that that consummate master of his art would never have drawn up suddenly in his exciting course, to interpolate drivelling allusions to Austria and the Hungarians, Poland, Ireland, and England—or tame and even irritating moralisings at the very crisis of the adventure, as is too often the case with Mrs Stowe. But this very fault, and a serious one to a reader of fiction it is, must be referred to a cause infinitely and eternally honourable to the author—her pure and noble purpose in writing the book. With our eye fixed on that purpose, we will forgive her five times as many faults of style and arrangement as she is fairly chargeable with.

“In every work regard the writer’s *end*.”

And in the application of this obviously just critical canon, we are disposed to look, in the present case, with peculiar benignity on miscarriages as to *means*. One or two of them, however, we must lightly indicate, for we are in our critical chair in addition to those at which we have already glanced.

We shall begin with a small matter. It is evident that the writings of one English author at least of the present day have made a deep impression on Mrs Stowe. This is Mr Dickens, with whom, indeed, she has much in common; but he must not attribute it to mere gallantry, if we express our opinion that there are parts of “Uncle Tom’s Cabin” which he never can surpass, which he never has surpassed. She probes human nature every whit as tenderly and truly as he; her sympathies are as keen and subtle, her spirit is as generous as his; her perception of the humorous as quick and vivid as his own. She shows also his—so to speak—structural faults; which, in a general way, we may indicate by saying, that condensation and directness of course would greatly improve the compositions of both. A lively reader hates to be detained on his way, in order to have traced out for him the source and operation of the *motives* by which characters are

actuated. He likes to be given credit for a capacity to do that for himself. It occurs to us, that had Mr Dickens passed his life among the same scenes as Mrs Stowe, making allowance for certain special circumstances affecting the latter, he would have produced a work very similar, in both its faults and excellencies, to "Uncle Tom's Cabin." That she is a reader, and doubtless an admirer of his, is abundantly evident; for she has closely copied his manner, and that not in its most favourable manifestations, but rather the more obvious mannerisms. Mr Dickens might have written this passage for her:—

"Carriage sticks fast, while Cudjoe on the outside is heard making a great muster among the horses. After various ineffectual pullings and twitchings, just as Senator is losing all patience, the carriage suddenly rights itself with a bounce, two front wheels go down into another abyss, and Senator, woman, and child, all tumble promiscuously on to the front seat; Senator's hat is jammed over his eyes and nose quite uncere- moniously, and he considers himself fairly extinguished; child cries, and Cudjoe on the outside delivers animated addresses to the horses, who are kicking, and floundering, and straining under repeated cracks of the whip. Carriage springs up with another bounce—down go the hind wheels—Senator, woman, and child fly over on to the back seat, his elbows encountering her bonnet, and both her feet being jammed into his hat, which flies off in the concussion. After a few moments the 'slough' is passed, and the horses stop, panting; the Senator finds his hat, the woman straightens her bonnet, and hushes her child, and they brace themselves firmly for what is yet to come."

Here again—

"If any want to get up an inspira- tion, under this head, 'The beauty of old women,' we refer them to our good friend Rachel Halliday, just as she sits there in her little rocking- chair. *It had a turn for quaking and squeaking—that chair had—either from having taken cold in early life, or from*

some asthmatic affection, or perhaps from nervous derangement. But as she gently swung backward and forward, the chair kept up a kind of 'creechy-crawchy' that would have been in- tolerable in any other chair. But old Simon Halliday often declared it was as good as any music to him, and the children all avowed *that they wouldn't miss of hearing mother's chair for anything in the world.*"

Another little mannerism acquired from the same brilliant quarter, is the use, in grave composition, of the colloquial, "can't," "won't," "didn't," "couldn't," &c. &c. These are little bits of vulgar slip-slop, which are sad eyesores to readers of taste; and we cannot for the life of us see what end is gained by introducing them into black and white, except, perhaps, in fitting dialogue.

We have already intimated a con- siderable want of tact in Mrs Stowe, in twitching aside, as it were, her reader, when in full course of following her breathless, to listen to some self-ob- vious and commonplace moralising. Here is one most provoking instance. Poor beautiful Eliza Harris, support- ed by almost supernatural energy, is flying from misery and infamy—her little son close-clasped in her arms—with but a little time to improve her precarious chances of escape to Canada; knowing that her little one is *sold*, and that the blood-hounds may almost then, even, be snuffing on her track! 'Tis early—very early—in a frosty February morning; the spark- ling stars are looking down, as it were, out of the cold silent heavens with pitying looks on the poor fugitive. She hastily hushes her child into si- lence, as "with vague terror he clings round her neck." He could have walk- ed;—but let good Mrs Stowe's own fleet pencil tell of her heroine's feathery movements:—

"Her boy was old enough to have walked by her side, and in an indiffer- ent case she would only have led him by the hand; but now the bare thought of putting him out of her arms made her shudder; and she strained him to her bosom with a convulsive grasp as

she went rapidly forward. The frosty ground creaked beneath her feet, and she trembled at the sound; every quaking leaf and fluttering shadow sent the blood backward to her heart, and quickened her footsteps. She wondered within herself at the strength that seemed to be come upon her—for she felt the weight of her boy as if it had been a feather, and every flutter of fear seemed to increase the supernatural power that bore her on; while from her pale lips burst forth, in frequent ejaculations, the prayer to a Friend above—“Lord, help!—Lord, save me!”

While the reader—perhaps herself a palpitating mother, almost blinded with her tears—is flying along with the dear fugitive and her child, bah! she is arrested, to listen to twaddle—we must say it—as follows:—

“If it were *your* Harry, mother, or *your* Willy, that were going to be torn from you by a brutal trader to-morrow morning—if you had seen the man, and heard that the papers were signed and delivered, and you had only from twelve o’clock till morning to make good your escape—how fast could *you* walk? How many miles could you make in those few brief hours, with the darling at your bosom—the little sleepy head on your shoulder—the small soft arms trustingly holding on to your neck?”

Forgive us, dear Mrs Stowe, if we gently reproach you for thus marring your own beautiful narrative, and also giving English mothers credit for being so obtuse and phlegmatic as to be unable to realise all these thoughts and feelings as they are hasting along with you!

And there are many such instances of defective workmanship. A considerable portion of these consists of preaching—always, doubtless, perfectly orthodox and evangelical, but smacking too strongly—will she forgive us?—of the *conventicle* twang. After all, however, Mrs Stowe must be tried by the canon already cited—“regard the writer’s *end*,” and doubtless she knows that portion of the American public for which she chiefly

writes, and what kind and amount of *hard-hitting*, so to speak, is necessary to make an impression on sensibilities enclosed in rhinoceros’ hide. We do not say that it is so; but we suppose that Mrs Stowe has classes of hard people in view, and knew the rough force requisite to hit home.

All these, however, and other similar little matters which might be mentioned, are mere motes in sunbeams, when regarded by the eye of a just and generous criticism; which only regrets, every now and then, that the gifted authoress had not had the advantage of submitting her MS., or her printed sheets, to the eye of some competent censor, capable of seizing the scope of her noble purpose, and solicitous to remove every obstacle in the way of her attaining it. But she evidently did not write for us in England—in Europe; nor did this pious daughter of genius dream of the world-wide fame which she was destined to acquire. She has assured us, in print, that, “when writing ‘Uncle Tom’s Cabin,’” she was “entirely unaware and unexpectant of the importance which would be attached to its statements and opinions.” We implicitly believe her; and our heart gives her its entire confidence, as to a simple-minded and gifted Christian woman, writing out of the fulness of her heart, in order to open before the eyes of free, shuddering Christendom a hideous and blood-smeared page of living humanity. She has repeatedly and solemnly asseverated that she has taken the greatest possible pains not to misstate or exaggerate the case against slavery; that she speaks from long personal observation, and, in short, that “this work, more than any other work of fiction that ever was written, has been a collection and arrangement of real incidents, of actions really performed, of words and expressions really uttered, grouped together with reference to a general result, in the same manner that the mosaic artist groups his fragments of various stones into one general picture. His is a mosaic of gems—this is a mosaic of facts. * * * The book

had a purpose entirely transcending artistic purpose, and accordingly encounters, at the hands of the public, demands not usually made on fictitious works. It is treated as a reality—sifted, tried, and tested as a reality; and, therefore, as a reality it may be proper that it should be defended. * * * It is a very inadequate representation of slavery, and necessarily so, for this reason—that slavery, in some of its workings, is too dreadful for the purpose of art. A work which should represent it strictly as it is, would be a work which could not be read." "The writer," she adds, in the preface to her "Key," "has aimed, as far as was possible, to say what is true. * * * She has used the most honest and earnest endeavours to learn the truth. * * * And the book is commended to the candid attention and earnest prayers of all Christians throughout the world." These are grave statements, especially when falling from the pen of one who had already secured a world-wide hearing; and by the light of such statements "Uncle Tom's Cabin" ought to be read, unless Mrs Stowe's means of knowledge, or her truthfulness, can be seriously impeached. Looked at in this light, the writer is regarded as actuated by a magnificent spirit: one which cannot stoop to regard petty carping and cavilling, and need concern itself with nothing but grave and temperate objections based upon facts. It will not do for her American critics to aver, that, "without being actuated by wrong motives in the preparation of this work, she has done a wrong which no ignorance can excuse, and no penance can expiate" *—unless such an allegation can be sustained by unequivocal evidence of exaggeration, misrepresentation, and falsehood. All we shall say at present is, that if Mrs Stowe is to be believed by her reader, he will lay down her book, on having deliberately read it, with feelings and thoughts too painful and deep for utterance, and which ought to lead to action.

* *New York Courier*, Nov. 5, 1852. Quoted, *Key*, p. 97.

The title of Mrs Stowe's book—"Uncle Tom's Cabin"—is far from commensurate with the scope of the fiction, or rather series of "pictures," of which it consists. The cabin is not the scene of any events of importance to the story. It is not impossible that her intention originally was to confine her pencil to the delineation of Tom, his residence, family, relations, and the incidents which befell them personally through the operation of slavery. Uncle Tom, and his fortunes might have constituted a work by itself, and those of George and Eliza Harris, a second. The former might have been called "Uncle Tom," and the latter "George and Eliza;" or, "The Cabin," and "The Flight;" for there are two classes of adventures quite separate from each other—the experiences of the submissive, and the adventures of the recalcitrant, slave. It is true that the authoress seeks to link them together, at starting, by making Uncle Tom and Eliza Harris fellow-slaves of the same master and mistress, and Uncle Tom and Eliza's child, Harry, the subjects of a joint sale to the slave-trader; but beyond this slight connection there is none. Eliza, with her sold child, pays only one hasty affrighted midnight visit to the cabin of Uncle Tom; but her husband is never shown near it. At the very end of the story, however, Mrs Stowe seems to have had suggested to her the propriety of coupling the fates of her characters together in some way or other—so that, in a manner which may provoke the smile of a veteran novelist, she contrives to make a female slave, Cassy, whom Tom encounters at the close of his career, prove to be the mother of Eliza Harris; and a lady passenger, who happens, by the merest accident on earth, to be in the steamboat in which the aforesaid slave is escaping, turns out to be the sister of George Harris! Rather a fortunate coincidence this, it must be owned. Thus it is, that, under the title "Uncle Tom's Cabin—a Picture of Slave Life in America," there are two distinct threads of story, only nominally and arbitrarily connected together; while

on each is strung a series of interesting, affecting, and even horrifying incidents, developing character, and the working of institutions upon it.

Let us now give some account of the style in which she has executed her work.

The tale opens with a skilfully contrived scene, the object being to arrest attention, without plunging into horrors which might at first shock a reader, and render him incredulous; and yet it is very startling to a European not familiar with slavery. It is a *tête-à-tête* between a respectable Kentuckian planter, involved by over-speculation, and the slave-dealer Haley, an impudent, swaggering, hard-hearted, gaudily-dressed brute, who bargains over his brandy-and-water for flesh and blood, just as he would do in respect of a bale of cotton. Mrs Stowe opens the wretch's character, as it were an oyster, with a firm and practised hand. It is quickly seen that the subject of chaffering is the sale of poor Tom, with whom Mr Shelby is reluctantly compelled to part, as some of his heaviest "paper" had found its way into the hands of Mr Haley. In this introductory dialogue we meet with new and fearful phraseology, as applied to human beings. Mrs Stowe, with much tact, contrives, by a word or two, to excite the reader's interest in Tom long before he comes on the scene. In enumerating his good qualities, Mr Shelby speaks of poor Tom's religious character as a guarantee of his fidelity. This is how it strikes the slave-dealer. "Some folks don't believe their's pious niggers, Shelby; but I *do*. I had a feller, now, in this yer last lot I took to Orleans — 'twas as good as a meetin' now, really, to hear that critter pray! * * * He fetched me a good sum, too; for I bought him cheap of a man that was obliged to sell out" (a tasteful allusion to the exact quandary of his companion!) "so I realised six hundred on him. Yes.—I consider religion a valeyable thing in a nigger, when it's the genuine article, and no mistake!" By-and-by, in bursts little Harry, romping about the room, trot-

ted out by Mr Shelby, to amuse his hateful companion by his quaint antics; who had first asked, as the child entered—while the two gentlemen! were haggling about the price of Tom—"Well; haven't you a boy or a gal that you could throw in with Tom?" * * * After a while, Mr Haley adds—"I've got a friend that's going into this yer branch of the business—and wants to buy up handsome boys to raise for the market—fancy articles entirely!" Mr Shelby having hinted his reluctance to separate the child from his beautiful mother, who had just withdrawn him from the room, Mr Haley favours his companion with the result of his experiences in such matters; deprecating doing anything rashly ("though these critters arn't like white folks, you know,") lest—lest—it should injure the mother's health, and lower *her* price in the market! And he mentions a grievous blunder made by a friend of his, who too suddenly sold away a mother's baby, on which she "jist went ravin' mad, and died in a week—*clear waste, sir, of a thousand dollars*, jist for want of management—there's where't is. It's always best to do the humane thing, sir; that's been my experience." By this time, our gentleman reader is disposed to fling friend Haley through the window; and, our lady reader—but, oh! as for her, we have much more serious matter in store. Mr Shelby, it is intimated, was desirous to help Mr Haley down stairs with a kick, but he was Mr Shelby's creditor! On the former's return, his debtor's scruples have been overcome; and poor good old Tom, and little Harry, have become the property of Mr Haley, who is to take them away the next morning! The whole of this introductory scene is highly creditable to Mrs Stowe's powers: it is graphic and dramatic, character and incident being hit off with a quiet strength, auguring well for the rest of her performance. She has not overdrawn Haley. She has given us quite enough to startle and disgust us with—the system, more than the individual, and has at the same time relieved the reader's mind

by a just-perceptible strain of drollery and piquant satire. But how distinctly you see, all the while, the dismayed and ungratefully-treated patriarch, old Tom, and the beautiful mother with bleeding heart soon to come before us—the one, his big heart heaving with grief and astonishment; the mother's, bleeding and broken! The first few chapters of this work will satisfy the most fastidious reader that he is sitting down before the production of a great artist. The scene enacting in Uncle Tom's cabin, during the time that his master is selling him to Haley, and consigning him to those of unknown suffering and death, is first-rate, and peculiarly racy to European readers; who, though strangers to such scenes, feel that this must be painted to the life. From the first to the end of the eighth chapter, including also the tenth, we are conducted, indeed, "from gay to grave, from lively to severe;" the lights and shadows of negro life are brought before us with equal vividness and distinctness, by scenes happily contrived, without a tinge of exaggeration, or a disfiguring touch of coarseness. Mr and Mrs Shelby are just what they ought to be, without any marked characteristics; the reader's attention being thus fixed undisturbedly on the new figures of Haley, Uncle Tom and Aunt Chloe, George and Eliza Harris, Marks and Tom Loker, as well as the skittish, frolicsome, mischievous, and selfish negro servants. The story, too, is advancing: Tom is on his journey, manacled and fettered, in the slave-wagon with Haley, whose pursuit after Eliza and her child has been hitherto in vain, in spite of his grim auxiliaries; and George also has started safe on the desperate race for freedom: the little we have seen of him induces us heartily to say—God speed you! brave soul, you are worthy of the prize—may you win it!

The ninth chapter introduces us to quite a different scene—Senator Bird, and his bustling little soft-hearted wife, who became the host and hostess of fugitive Eliza—the pallid, the breathless—with tottering knees and bleed-

ing feet—who has been led by the Kentuckian, who had helped her up the bank of the river, to the house of the senator and his wife, just as they are discussing—the abolition question. They, their children, and their quiet home-scene, are beautifully sketched—as are the means by which Eliza and her child are conducted, amidst the breathless suspense of the reader, to a place of temporary succour and safety.

The eleventh chapter introduces us to a different time and locality—an evening in a remote Kentucky hotel. The wild Kentuckian guests squat about and straddle their legs, and chew, and spit, before us. What a gathering of *hats* of all shapes and sizes—"quite a Shakespearian study!"—is before us! We see them all, and can conjecture the stranger aspect of those who wear them! It is here that our disguised friend George turns up, in the way we have mentioned. 'Tis here that he says, with erect form and flashing eye, to his former kind master, Mr Wilson, "I've said *Mas'r* for the last time to any man! I'm free!"

"Take care. You may be taken," replies good Mr Wilson, apprehensively.

"All men are free and equal *in the grave*, if it comes to that, Mr Wilson," says lion-hearted George, who is armed to the teeth. * * * "Good-by, sir; if you hear that I'm taken, you may know that I'm dead!" He stood up like a rock, and put out his hand with the air of a prince. Well done, Mrs Stowe! And how tenderly she presently smites the rock of his resolution, till the pent-up waters of a husband and a father gush forth! So do those of Mr Wilson, as he accepts poor George's little commission, to give to his wife the pin which she had formerly given to him as a Christmas present, and beseech her to get to Canada if ever she have the means, "and," he adds, "tell her to bring up our boy a FREE MAN!"

Chapter XII. gives us a hateful glimpse of an auction sale of slaves; after which we accompany friend Haley, with poor Tom and some other human cattle, in La Belle Rivière, a boat on the Ohio, "floating gaily down the stream,"

stuffed full of slaves, "under a brilliant sky, *the stripes and stars of free America waving and fluttering overhead!*" Who can read without a shudder of the young mother, whose infant has been deceitfully sold from her—who is suddenly told of her bereavement? "she did not scream, the shot had passed too straight and direct through her heart for cry or tear. Dizzily she sate down. Her slack hands fell lifeless by her side. Her eyes looked straight forward, but she saw nothing. All the noise and the hum of the boat, the groaning of the machinery, mingled dreamily to the bewildered ear; and the poor dumb-stricken heart had neither cry nor tear to show for its utter misery. She was quite calm." In vain, during the bright starlight solitude and silence, had poor Tom, forgetting his own griefs—his forlorn wife and children—crawled for a moment to her side, and tried to whisper a word of comfort from the New Testament. Her heart was palsied; and some time afterwards the good old slave was startled from his doze. "Something black passed by him quickly; * * * he heard a splash in the water. * * * No one else had seen or heard anything. He got up and searched—the woman's place was vacant—the poor bleeding heart was still at last, and the river rippled and dimpled just as brightly as if it had not closed above that heart!"—"Where alive is that gal?" said her new master, perplexedly, in the morning, searching every corner of the boat in vain; and then trying to make up his mind to the loss of so many dollars' worth, with what philosophy he might.

Chapter XIII. finds Eliza and her husband in the Quaker settlement, all prim, precise, kindly, thoughtful, and resolute about securing the safety of the fugitives. "Thou'rt safe here by daylight," said his hospitable host Simeon, "for every one in the settlement is a Friend, and all are watching. Moreover, it is safer to travel by night." Thus ends the chapter. The next three, XIV., XV., XVI., in continu-

ation with chapters XVIII., XIX., XX., XXII., XXIII., XXIV., XXV., XXVI., XXVII., XXVIII., XXIX., (that is, fourteen, or upwards of a third of the entire work), find us in widely distant and different scenes,—travelling up the magnificent Mississippi, and finally housed at New Orleans, and moving among a new set of characters. Tom having, on the voyage, changed hands, and become the property of Mr St Clare, grateful for his having saved the life of his daughter Eva—for she falls over the boat side into the water, and Tom plunges in after her. This is a somewhat startling incident, and it was not quite necessary to peril the fragile little creature's life, in order to supply her father with an inducement to buy Tom. Story-tellers, mindful of the wise Horatian rule, should never use greater machinery to bring about their ends than is adequate. The doing so generally argues a deficiency of power or invention. In the present instance the gentle reader's feelings are shocked, and needlessly; for as little Evangeline St Clare was the only and idolised child of her father, who was on board, and wanted a coachman—having dismissed his own for drunkenness—what more natural than for Tom, having gained, as in a pretty and natural way he had done, the affection of little Eva on the voyage, to occur to her and her father, as a good successor to his discarded Jehu? A silvery word or two from Eva's sweet little lips would have sufficed, and Tom, in the quietest way in the world, would have become the sable chattel of Mr St Clare. Observe, the very idea had occurred to Eva before her sudden and superfluous immersion, and she herself had told him of her intention.

* * * "So, Uncle Tom, where are you going?"

"I don't know, Miss Eva."

"Don't know," quoth she, concernedly.

"No, I'm going to be sold to somebody. I don't know who."

"My papa can buy you," said Eva, quickly, "and if he buys you, you will

have good times. I mean to ask him to * this very day.'

"'Thank you, my little lady,' said Tom."

Five minutes afterwards Mrs Stowe has heart enough to let the benevolent little creature go overboard, simply to be rescued by Tom! Nor is the incident told forcibly; and it elicits no unusual trait of character in anybody. Having thus introduced Tom to new places and persons, let us give a general account of this elaborate episodical portion of Mrs Stowe's undertaking.

The figures in the foreground of this large picture are—Mr and Mrs St Clare, his cousin Miss Ophelia, his daughter Eva, or Evangeline, Topsy, and Uncle Tom. Those in the background are Mr St Clare's brother, his youthful son Henrique, and a confused heap of domestic slaves—all as happy as happy can be, under the protection of their wealthy, indolent, good-natured proprietor, Mr St Clare; but there is also, almost hid in the dark shadow, *one Prue!* As for Tom, the lines have fallen to him in exceedingly pleasant places; he leads a life of only nominal servitude—the huge old pet of pretty little Eva, and consequently a favourite of her father. Here Mrs Stowe has evidently expended much greater pains than on any other portion of her work; but we doubt greatly whether she will be satisfied with our judgment on the subject. Speaking as English critics, we are of opinion that Topsy is worth all the others, ten times over; then comes Mrs St Clare; then the cook, ladies'-maids, and the valet Adolph; then Miss Ophelia, then Eva, and then Mr St Clare. The others have nothing distinctive about them, and seem introduced simply to "draw out" the characters and opinions of Mr St Clare and his daughter Eva.

* "I mean to ask him to." This is a form of expression continually occurring in this work. It is also one used by the vulgar in this country; but Mrs Stowe puts it into the mouths alike of educated and uneducated—black and white. We might notice many analogous vulgarisms, in at least English eyes, but the critic is disposed heartily to act on the principle—

"Verum ubi plura nitent * * * non ego paucis
Offendar maculis."

Augustine St Clare and his brother Alfred are of Canadian descent—the sons of a wealthy Louisianian planter; their mother having been a lovely and pious Huguenot French lady, whose family had been early emigrants to Louisiana; and these two had been her only children. It is with Augustine† that we are at present concerned; and he having been crossed in love, through the cunning cupidity of the young lady's guardians—in disgust, and to show his indifference towards one whom he erroneously supposed to have jilted him, married the wealthy reigning belle of the season, "a fine figure, a pair of bright dark eyes, and—a hundred thousand dollars." Her husband was of a "sensitive temperament"—"gay, easy, unpunctual, unpractical, *sceptical!*" Indeed, he himself declares, as to this last, "religion is a remarkably scarce article at our house." Almost immediately after his marriage, he received a letter from the lady to whom he had been "so passionately—romantically" attached, explaining the true state of matters. She was yet unmarried, and wrote fervently to him, supposing him also unmarried!

"Thus ended the whole romance and ideal of life for Augustine St Clare," whose wife was the mere incarnation of silliness, vanity, selfishness, and tyranny, as far as she dared to show this last. Her husband treated her, from first to last, with undisguised but laughing contempt; but it may be doubtful whether she really appreciated the extent to which he civilly despised her.

"'Mr St Clare, I wish you wouldn't whistle,' said Marie; 'it makes my head worse.'

† Mrs Stowe is evidently anxious to ingratiate her favourite hero with her readers, and perhaps with young ladies she may succeed, by constantly dwelling on his "large, blue, flashing eyes," "large, melancholy, blue eyes," "his *fine face*, classic as that of a Greek statue"—and so forth: but somewhat sterner touches are requisite to make him a hero, in the estimation of a man! It seems also rather odd to see him, an adult, "sitting on the floor, and laying his head back in Miss Ophelia's lap"—who lays her "hand on his forehead"—he saying to her, "Don't take on, so awfully serious!" •

"'I won't,' replied St Clare. 'Is there anything else you would wish me not to do?'"

"'I wish you *would* have some kind of sympathy for my trials; you never have any feeling for me!'"

"'My dear accusing angel!' said St Clare.

"'It's provoking to be talked to in that way!'"

"'Then, how *will* you be talked to? I'll talk to order—any way you'll mention, only to give satisfaction.'

"'St Clare always laughs when I make the least allusion to my ill health,' said Marie, with the voice of a suffering martyr. 'I only hope the day won't come when he'll remember it!' she added, and put her handkerchief to her eyes. Of course, there was a rather foolish silence."

Happy couple! But we think we have such in our own island home! Mrs St Clare was "beautiful, accomplished, and an heiress—entertaining no doubt that Augustine was a most fortunate man in having obtained her."

"It is a great mistake," acutely observes Mrs Stowe, "to suppose that a woman with no heart will be an easy creditor in the exchange of affection. There is not on earth a more merciless exactor of love from others than a thoroughly selfish woman; and the more unlovely she grows, the more jealously and scrupulously she exacts love to the uttermost farthing." At length she brings her husband a solitary child, Evangeline, whom he names after his gifted, beloved, and sainted mother. From the time of Eva's birth, her mother's health "gradually sunk. A life of constant inaction, bodily and mental—the friction of ceaseless ennui and discontent, united to the ordinary weakness which attended the period of maternity, in the course of a few years changed the blooming young belle into a yellow, faded, sickly woman, whose time was divided among a variety of fanciful diseases, and who considered herself in every sense the most ill-used and suffering person in existence."

Such a woman as this, being worse than a mere cipher in her contemptu-

ous husband's establishment, and Eva's health requiring change of air, he had taken her to Vermont for a season; bringing back with him his cousin Ophelia, a spinster of forty-five; a model of propriety, exactitude, and a sort of hard conscientiousness. She was the absolute bond-slave of the "*ought*." Her standard of right was so high, so all-embracing, so minute, and making so few concessions to human frailty, that, though she strove with heroic ardour to reach it, she never actually did so, and of course was burdened with a constant and often harassing sense of deficiency. This gave a severe and somewhat gloomy cast to her religious character.

The contrast between this starched, prim, yet worthy beau-ideal of duty, and "gay, easy, unpunctual, impractical" St Clare, is well conceived, and nearly as well carried out before the reader, who gradually conceives a kind of respect for her, which seems continually on the point of warming into regard; but the predominant idea in his mind is, that Miss Ophelia would make an excellent housekeeper in—somebody else's establishment: for himself, she would—he fears—be too good and too hard—and—"tall, square-formed, and angular." What a treasure, however, thinks he, for a widowed cousin—three hundred miles off, with eight or ten wild boys and girls to break in! Mrs Stowe tells us, that Miss Ophelia is "the representative of a very numerous class of the very best of northern people, of activity, zeal, unflinching conscientiousness, clear *intellectual* discrimination between truth and error, and great logical and doctrinal correctness; * but with a want of that

* "Her theological tenets were all made up, labelled in the most positive and distinct forms, and put by, like the bundles in her patch trunk; there were just so many of them, and there were never to be any more. Under-laying all, deeper than anything else, higher and broader, lay the strongest principle of her being—conscientiousness. *Nowhere is conscience so dominant and all-absorbing as with New England women.*" [Bless them!] "It is the granite formation which lies deepest, and rises out, even to the tops of the highest mountains." This last we suspect to be a touch of her relative—The "Professor!"

SPIRIT OF LOVE, without which, in the eye of Christ, the most perfect character is as deficient as a wax-flower, wanting in life and perfume. * * * Yet that blessed principle is not dead, but only sleepeth, and always answers to the touch of the true magnet—divine love." She, however, "unconsciously represents one great sin—the prejudice of caste, and colour." Even in the New England States, where slavery has been abolished by law, this prejudice flourishes in full and fell vigour, despite, even, the melting sunlight of Christianity! Those who will nobly stint themselves of luxuries, and almost necessities, to send the gospel to the *distant* dark heathens, at home loathe the sight and contiguity of their black brother, and exhibit it even in the house of God. "Supposing," Mrs Stowe says, solemnly and finely, "our Lord were now on earth as he was once, what course is it probable that he would pursue with regard to this unchristian prejudice of colour? There was a class of men in those days, as much despised by the Jews as the negroes are by us; and it was a complaint made of Christ that he was a friend of publicans and sinners. And if Christ should enter, on some communion season, into a place of worship, and see the coloured man sitting afar off by himself, would it not be just in His spirit to go there and sit with him, rather than to take the seats of his richer and more prosperous brethren?"

The character of Miss Ophelia is most happily developed, by means, principally, of Topsy—the Gem of the book, of whom more anon; and that character is, as will be seen, *proper* to the moral climate of New England; whereas, according to Mrs Stowe herself, "Mrs St Clare is the type of a class of women not peculiar to any latitude, nor any condition in society; * * * she may be found in England, or America." The same, indeed, is to be said of "Alfred and Augustine St Clare, who represent," she says, "two classes of men which are to be found in all countries,—the radically aristocratic and democratic men." In de-

fining *her* "aristocrat" and "democrat," it must be borne in mind that she is speaking of American exhibitions of those characters, and as connected with the relation of slave-holders. On this subject we might make many observations; but content ourselves with saying, that, in the main, we concur with Mrs Stowe's views, as expounded by herself, with reference to the perilousness of intrusting man with practically irresponsible authority over his fellow-man. That state of society is essentially vicious, and foully rotten before the eyes of our Almighty Maker, *who hath made of one blood all nations of men for to dwell on all the face of the earth*, which does not make THE LAWS the indifferent and easily accessible protector, vindicator, and avenger of every human being living in that state.

The two brothers discuss frequently, and occasionally with considerable force, the question of slavery, as to its consistency or inconsistency with an enlightened and civilised system of laws, and the spirit and precepts of Christianity.

Why Mrs Stowe should have thought it necessary to represent her favourite St Clare as a *sceptic* on religious subjects, is not quite clear; unless, indeed, she intends to intimate that it is a dark and grievous characteristic of the whole class which he represents. Perhaps it may be, unfortunately, so; and, indeed, she seems, with bitter sarcasm, to hint that one thing which tends to produce this result is, the cool accommodation of the principles and precepts of the Gospel to the existing order of things in the slave states, in even their vilest aspects. Upon the whole, however, Mrs Stowe succeeds in satisfying the reader that her gentleman hero is a manly fellow, with all his faults. His love of his little daughter, his grief as he perceives her withering away before his eyes under the blight of consumption, his anguish and despair when she is taken from him, are all told touchingly—very touchingly, with true pathos. So also the fondness with which he cherishes the memory

of his mother. He forms the resolution to give poor Tom his freedom; but as it is necessary, for the exigencies of the story, to get poor Tom into worse hands, there is no other way occurs to the author than to make Mr St Clare die abruptly; and the most suitable mode of bringing about that result is, when his moral being has been soothed and solemnised by a religious conversation with his cousin Ophelia, in which he says he "does not know what makes him think so much of his mother that night." He "has a strange kind of feeling as if she were near him * * *"; he by-and-by says, "I believe I'll go down street and hear the news to-night." He gets into a café; and while reading the paper, an affray arises between two partially intoxicated *gentlemen*; he "attempts to wrest a bowie-knife from one of them, who gives him a fatal stab with it in the side. He is brought home on a shutter, wrapped in a cloak, to the consternation of all in the house, and dies the same evening, having first said to Tom, "Pray!" He dies, "opening his eyes with a sudden light, as of joy and recognition, and saying 'mother'—and then he was gone."

Eva is evidently a favourite creation of the author's, and she is undoubtedly a gentle and sweet little spirit, suggesting tender thoughts of love and pity; but a mere worldly reader is apt to think, with a little impatience, that she is so very good; she talks so much beyond her years; * and challenges our admiration, with the confidence of a pattern child. No one can find fault with anything she says or does; but unfortunately, you see that the writer from the first intended her to be a little piece of perfection. Frail and sensitive human

* Here, however, is an exquisite touch. When Eva can no longer walk, Tom carried her; and on one occasion her father seeks to perform that office, "Oh, papa! let Tom take me! Poor fellow, it pleases him; and you know, *it's all he can do*, and he wants to do something!"

"So do I, Eva."

"Well, papa, you can do everything, and are everything to me. You read to me,—you sit up at nights; but Tom *has only this* one thing, and his singing!"

nature is a little irritated by this, and suspects something factitious. It says, peevishly, "I know many good and charming children, but here's an angel in flesh!" When, however, our excellent and pious author herself tells us, that "the gentle Eva is an impersonation, in childish form, of the love of Christ"—worldly criticism utters not another word, but reverences the writer's motives. Here is little Eva's death—

"St Clare saw a spasm of mortal agony pass over the face. * * * 'Eva!' said he, presently, gently. She did not hear. 'Oh, Eva, tell us what you see! What is it?' A bright, a glorious smile passed over her face, and she said, brokenly,—'Oh, love—joy—peace!' gave one sigh, and passed from death to life."

It might have been grander, perhaps, if her *voiceless* response had been that "glorious smile," reflecting the ineffable happiness—the suddenly seen glory of heaven. Are not these words, again, more likely to have fallen from an adult, than a mere child?

Let the spectator's eye now, however, be turned heavily towards the darkest portion of the background, and there is crouching a grisly figure, old Prue, "cross old Prue," as even sweet Eva styled her! This creature is introduced and disposed of by the author, with a certain dreadful power; she is seen for but a short space—but in that short space, what a tale of horror is told!

Prue was a tall, bony, coloured woman, with a scowling expression of countenance, and a sullen, grumbling voice. Her office was, to carry on her head a basket of rusk and hot rolls to Mr St Clare's house.

"She set down her basket in the kitchen, squatted herself down, and resting her elbows on her knees, said—'O, Lord, I wish I'se dead!'"

"Why do you wish you were dead?" asked Miss Ophelia.

"'I'd be out of my misery,' said the woman, gruffly, without taking her eyes from the floor."

She is among the merry, saucy, black and quadroon servants, who

jibe her, as soon as Miss Ophelia is gone. The only one who notices her is Tom, who offers to carry her basket for her, and tries to persuade her to leave off drinking, to which misery has driven her. She wishes herself in hell, Tom shuddering while she says so, to be out of her misery.

"'Where was you raised?' he asked.

"'Up in Kentuck. A man kept me to breed chil'en for market, and sold 'em as fast as they got big enough; last of all, he sold me to a speculator, and my mas'r (a baker) got me o' him.'

"'What set you into this bad way of drinkin'?' "

"'To get shet of my misery.'" And she proceeds to describe that misery; and many a tender mother has sickened and shuddered over the next eighteen lines.

A few days afterwards another woman! came in old Prue's place, to bring the rusks. On being asked about her by Dinah, another servant, she says, mysteriously, "Prue isn't coming any more!"

"'Why not?' inquires Dinah. 'She an't dead, is she?'

"'We doesn't exactly know. She's down cellar,' said the woman, glancing at Miss Ophelia. After Miss Ophelia had taken the rusks, Dinah followed the woman to the door.

"'What has got Prue, anyhow?' she said.

"The woman seemed desirous, yet reluctant, to speak, and answered in a low, mysterious tone, 'Well, you musn't tell nobody. Prue, she got drunk agin—and they had her down cellar—and thar they left her all day; and I hearn 'em saying that the flies had got to her—and she's dead!'"

The unhappy wretch had been whipped to sleep in a cellar, left there, and—"the flies had got to her!" Miss Ophelia's honest soul was fired with indignation on hearing it; and when she expressed her kindled womanly feelings to Mr St Clare, he received it with levity, "peeling his orange" while good, excited Miss Ophelia is denouncing it as "perfectly abomin-

able," and answering her with badinage; gaily adding, "My dear cousin, I didn't do it, and I can't help it; I would, if I could!"

Let us turn, however, from this revolting incident, to Mrs Stowe's *chef d'œuvre*, the inimitable Topsy, a true psychological curiosity—a character quite new to us, and delineated by the pencil of a consummate limner. The portrait will not bear an additional touch, nor the loss of one that has been given it. It exactly satisfies the critical eye.

We have already given the reader Topsy's presentation to Miss Ophelia. Here is the little black imp *in propria personâ* before you, as Mr St Clare paraded her before the astounded eye of his prim cousin:—

"She was eight or nine years of age—one of the blackest of her race; and her round, shining eyes, glittering as glass beads, moved with quick and restless glances over everything in the room. Her mouth, half open with astonishment at the wonders of the new mas'r's parlour, displayed a white and brilliant set of teeth. Her woolly hair was braided in sundry little tails, which stuck out in every direction. The expression of the face was an odd mixture of shrewdness and cunning, over which was oddly drawn, like a kind of veil, an expression of the most doleful gravity and solemnity. She was dressed in a single filthy, ragged garment, made of bagging; and stood with her hands demurely folded before her. Altogether there was something queer and goblin-like about her appearance. 'Here, Topsy,' said Mr St Clare, giving a whistle, as a man would to call the attention of a dog, 'give us a song, now, and show us some of your dancing.' The black glassy eyes glittered with a kind of wicked drollery, and The Thing struck up, in a clear shrill voice, an odd negro melody, to which she kept time with her hands and feet, spinning round, clapping her hands, knocking her knees together, in a wild, fantastic sort of time, and producing in her throat all those strange guttural sounds which distinguish the

native music of her race ; and, finally, turning a somerset or two, and giving a prolonged closing note, as odd and unearthly as that of a steam-whistle, she came suddenly down on the carpet, and stood with her hands folded, and a most sanctimonious expression of meekness and solemnity over her face, only broken by the cunning glances which she shot, askance, from the corners of her eyes. Miss Ophelia stood silent, perfectly paralysed with amazement."

A world of scrubbing and cleansing brings to sight "great welts and caloused spots"—ineffaceable marks of the system under which she had grown up that far, at the sight of which the heart of Miss Ophelia, who had a horrid repugnance to the touch of a nigger! "became pitiful within her!" She had compelled Jane, one of the quadroon maids, to assist her in the task of ablution, as she did, tossing her head with disgust; the "young one" "scanning, with a keen and furtive glance of her flickering eyes, the ornaments which Jane wore in her ears!"

When arrayed, at last, in a suit of decent clothing, and after her hair had been cropped close to her head, Miss Ophelia sits down to question the thing; who tells her, with a grin showing all her glittering teeth, that she does not know how old she is; that she never had a mother; never was born; never had no father, nor mother, nor nothin'. "I was raised by a speculator, with lots of others. Old Aunt Sue used to take care on us."

"Have you ever heard anything about God, Topsy?" She looked bewildered, and grinned.

"Do you know who made you?"

"Nobody, as I knows on," said the child, with a short laugh. "I 'spect I grow'd! Don't think nobody ever made me!" * * *

"Virgin soil here," indeed, as St Clare slyly suggested to his dismayed cousin. By-and-by—behold Topsy, washed and shorn, arrayed in a clean gown, with well-starched apron, standing reverently before Miss Ophelia, with an expression of solemnity well

befitting a funeral, while she carefully initiates her sooty little charge into the mysteries of bed-making. Topsy pays profound attention to all the directions about under-sheets, bolsters, and turning down; but not too profound to prevent her, the young disciple, when her teacher's back was turned for a moment, snatching a pair of gloves and a ribbon, which she adroitly slipped into her sleeves, and stood with her hands duly folded as before!

Being required by-and-by to reduce her lessons to practice, out drops from her sleeve an end of the purloined ribbon! at which she looks, when furiously challenged, with innocent wonder. She declares solemnly she had never seen it till that minute; and when angrily shaken by Miss Ophelia, out dropped the gloves from the other sleeve! Topsy now owns to the gloves, steadily denying the ribbon; but, threatened with a whipping, confesses to both, with woeful expressions of penitence. Being adjured to "confess" if she has taken anything else, the little wretch owns to having taken "Miss Eva's red thing she wears round her neck," and Rosa's red earrings, and having burnt them! "Burnt them! why did you do that?" inquires the astounded lady. "'Cause I'se wicked—I is! It's mighty wicked, anyhow. I can't help it!" But in a moment or two's time, Eva and Rosa make their appearance, with necklace and earrings as usual, never having parted with them.

"I'm sure I can't tell what to do with such a child," said Miss Ophelia in despair. "What did you tell me you took these things for, Topsy?"

"Why, Missus said I must 'fess; and I couldn't think of nothing else to 'fess," said Topsy, rubbing her eyes.

"But of course I didn't want you to confess to things you didn't do. That's telling a lie just as much as the other."

"Laws, now, is it?" said Topsy, with an air of innocent wonder!

Here is an impressive contrast:—

"Eva stood looking at Topsy. There stood the two children, representatives

of the two extremes of society. The fair, high-bred child, with her golden head, her deep eyes, her spiritual, noble brow, and prince-like movements; and her black, keen, subtle cringing, yet acute neighbour. They stood the representatives of their races. The Saxon, born of ages of cultivation, command, education, physical and moral eminence; the African, born of ages of oppression, submission, ignorance, toil, and vice."

If Miss Ophelia's conscientiousness were, to use the slang of the phrenologist, "largely developed," that of Topsy was about equal to the conscientiousness of a squirrel or a monkey; and good Miss Ophelia observes her *protégée* "lithe as a cat and active as a monkey," and to the full as wantonly mischievous, with dumb despair. One of her fancies was to deck herself in Miss Ophelia's choicest ornaments, and rehearse in them, like an actress, before the glass, singing, whistling, and making grimaces. Once surprised by the lady, with her "very best scarlet Indian crape shawl wound round her head for a turban!" "Topsy," says she, at the end of all patience, "what does make you act so?"

"'Dun no, missis. I 'spects 'cause I'se so wicked."

"'I don't know what I shall do with you, Topsy."

"'Law, missis, you must whip me! My old missis allers whipped me. I an't used to workin' without I gets whipped."

"'Why, Topsy, I don't want to whip you. You can do well if you choose; why won't you?"

"'Laws, missis, I'se used to whippin'. I 'spects it's good for me."

Though one might almost as well, one would have thought, have tried to teach a hedgehog astronomy, Miss Ophelia devoted herself to teaching the gnome the Catechism; and, after a patient year and a half's efforts, here were some of the blessed results, as exhibited before laughing Mr St Clare, before whom were confident catechist and hopeful catechumen:—

"'Q.—Our first parents being left to the freedom of their own will, fell

from the state wherein they were created.' Topsy's eyes twinkled, and she looked inquiringly.

"'What is it, Topsy?' said Miss Ophelia.

"'Please, missis, was dat ar *state* Kintuck?"

"'What state, Topsy?"

"'Dat state dey fell out of. I used to hear Mas'r tell how as we come down from Kintuck!'"

But what the sedulous didactic teaching of Miss Ophelia failed to do, would have doubtless been effected by sweet little Eva, had she lived: from whom, one day, fell the first word of kindness she had ever heard in her life; and the sweet tone and manner struck strangely on the wild rude heart, and a sparkle of something like a tear shone in the keen, round, glittering eye.

Twice again this strange creature flits across the scene, and on one of these occasions says:—

"'Old missus whipped me a deal harder, and used to pull my har, and knock my head agin the door; but it didn't do me no good! I 'spects if theys to pull every spear o' har out of my head, it wouldn't do no good, neither! I'se so wicked! Laws! I'se nothing but a nigger, no ways!'" * * * "But, Topsy, if you'd only try to be good, you might"—

"'Couldn't never be nothin' but a nigger, if I was never so good! If I could be skinned, and come white, I'd try then!'"

Poor Topsy! these words go to the heart of all but—a moral *leper white as snow!* There is in them a huge volume of anguish and reproach.

It required the potent eloquence of little Eva's death to dispel the last lingering feelings of Miss Ophelia's repugnance towards the unhappy little black, in whom also the same solemn event had worked a marked change.

"The callous indifference was gone * * * there was a *striving* for good—a strife, irregular, interrupted, suspended, oft—but yet renewed again." The finishing touch to this singular and masterly delineation is exquisite in every way:—

"One day, when Topsy had been sent for by Miss Ophelia, she came, hastily thrusting something into her bosom. 'What are you doing there, you limb? You've been stealing something, I'll be bound,' said the imperious little Rosa (a quadroon slave), who had been sent to call her, seizing her at the same time roughly by the arm.

"'You go 'long, Miss Rosa!' said Topsy, pulling from her; "'tan't none o' your business!'

"'None o' your sa'ce!' said Rosa. 'I saw you hiding something—I know yer tricks,' and Rosa seized her arm, and tried to force her hand into her bosom; while Topsy, enraged, kicked and fought valiantly for what she considered her rights. The clamour and confusion of the battle drew Miss Ophelia and St Clare both to the spot.

"'She's been stealing!' said Rosa.

"'I han't, neither!' vociferated Topsy, sobbing with passion.

"'Give me that, whatever it is!' said Miss Ophelia, sternly.

"Topsy hesitated; but, on a second order, pulled out of her bosom a little parcel done up in the foot of one of her own old stockings. Miss Ophelia turned it out. There was a small book which had been given to Topsy by Eva, containing a single verse of Scripture arranged for every day in the year; and in a paper, the curl of hair which she had given on that memorable day when she had taken her last farewell. St Clare was a good deal affected at the sight of it; the little book had been rolled in a long strip of black crape, torn from the funeral weeds.

"'What did you wrap *this* round the book for?' said he, holding up the crape.

"'Cause — 'cause — 'cause 'twas Miss Eva. Oh, don't take 'em away, please!' she said; and, sitting flat down on the floor, and putting her

* The next sentence in the text is a striking instance of the superfluous and even irritating habit of Mrs Stowe already alluded to. As if she had not painted so vividly as to touch the most stolid feelings, she adds—

"It was a curious mixture of the pathetic

apron over her head, she began to sob vehemently."*

"Topsy," says Mrs Stowe, "stands as the representative of a large class of the children who are growing up under the institution of slavery—quick, active, subtle, and ingenious—apparently utterly devoid of principle and conscience—keenly penetrating, by an instinct which exists in the childish mind, the degradation of their condition, and the utter hopelessness of rising above it." In a note to a friend on the same subject, she writes, beautifully, "There lies, buried down in the heart of the most seemingly stupid and careless slave, a bleeding spot that bleeds and aches, though he could scarcely tell why—and this sore spot is the degradation of his position."

Miss Ophelia, having had a formal gift of Topsy from Mr St Clare, takes her home to Vermont, where we are told she "grew rapidly in grace and favour with the family," at first sufficiently staggered by the quaint apparition. "At the age of womanhood she was at her own request baptized; and finally recommended and approved as a missionary to one of the stations in Africa." Of course the mode of training Topsy was beyond the scope of the writer's purpose; but we could have wished to see a good deal more of Topsy, in the progress of her mental and moral development. As it is, however, the sketch is pregnant with instruction, encouragement, and warning; and were it for this one portrait alone, Mrs Stowe would be entitled to the blessings of generations of blacks yet unborn. With the divine penetration of genius consecrated by holiness, she has wrought down to the seat of our common nature, in the black, crushed beneath whole piled-up mountains of prejudice, scorn, and despair.

We must now return to poor Tom, and the ludicrous—the little old stocking, black crape, text-book, fair soft curl, and Topsy's utter distress." Surely this is writing under the picture of a horse—"This is a horse: do you see its hair, head, neck, body, legs, hoofs, and tail? And it has ears, eyes, and nostrils!"

whose course is henceforth brief, and of deepening gloom, and whose *sun goes down in blood.*

Detestable Mrs St Clare, released from the humanising presence of her husband, as though she had been a deadly snake half-crushed by the presence of authority, makes amends for past inaction, by darting venomously at every one within her reach. She orders off a poor girl to the whipping-house, to be flogged *naked*, by the common flogger—a huge man—in the presence of as many of both sexes as chose to look on, and be entertained by her shrieks, and the sight of her quivering ensanguined flesh.* Mrs St Clare contemptuously discarded the entreaties of Miss Ophelia, based mainly, with a womanly energy, on the mere sense of sex: and in disgust, Miss Ophelia returns, with Topsy, to her own country. Moreover, though poor Tom had been repeatedly promised his freedom by her husband, as she well knows, she ruthlessly sells him, with all the other slaves. Tom is told of his fate—to be forthwith sent to the slave mart. “The Lord’s will be done!” he exclaimed, folding his arms, and sighing heavily. He appeals to Miss Ophelia, who makes a hopeless attempt on Mrs St Clare, relying on her deceased husband’s promise. “Indeed,” says that charming lady, delicately clad in elegantly-made mourning for him whose solemn wishes she was violating, as he lay scarce cold in his grave—“Indeed I shall do no such thing! Tom is one of the most valuable slaves in the place! It could not be afforded any way!” * * * “But consider his chance of getting a bad master”—“O! that’s all humbug!”—and the good lady turns a scornfully deaf ear to the solemn assurance that Mr St Clare had made the promise to Eva on her death-bed. Marie St Clare is the type, we are told, of a class.

“When Marie comes under a sys-

* The luckless girl bore her own penal letter-missive—“An order, written in Mrs St Clare’s delicate *Italian hand*, to the master of a whipping establishment, to give the bearer fifteen lashes!” and this for only a hastily-uttered saucy expression!

tem of laws which gives her absolute control over her dependants—which enables her to separate them at her pleasure, from their dearest family connections, or to inflict upon them the most disgraceful, degrading, and violent punishments, without even the restraint which seeing the execution might possibly induce—then it is that the character arrives at full maturity.”

Here we part with this viper; assuring the class whom she may represent, that they are burthened with the execration of the civilised world—most piercing of all, those of her fair, Free sisters.

Now one’s heart aches to see poor Tom, the helpless, sorrowful inmate, amongst a great quantity of uproarious and *quasi*-merry other live lumber—of a New Orleans slave-market. Oh, sickening scene! But here the two figures arresting the eye, and whose brief tale is told with melting pathos and simplicity, are Susan and Emeline, both beautiful, mother and daughter; the latter only fifteen, just budding into womanhood: both with hearts trembling at the fear of approaching separation—and with what kind of life before them? The mother to be sold for the purpose of breeding other slaves; the daughter—oh, speak it not in the ears of Free fathers and mothers—of Christian men or women—to be “sold to a life of shame!” She has “the same soft, dark eye” as her mother, “with longer lashes, and her curling hair is of a luxuriant brown.” And in passing, we are told, with an appalling irony, that “the gentleman to whom they belong, and to whom the money for their sale is to be transmitted, is a member of a Christian Church in New York, who will receive the money, and go thereafter to the sacrament of *his Lord* AND *THEIRS*, and think no more of it.”

The hurriedly-whispered dialogue of these two would break a heart of stone to overhear: they are, that forlorn mother and daughter, trying to express a hope, a faint hope, poor souls! that they may be sold together! In order to aid this result, and dis-

guise her beauty, the mother and she comb out her luxuriant tresses, so as to "look plain and decent;" but in the morning, when the watchful owner comes round to look at his human cattle—"How's this?" he said, stepping in front of Susan and Emmeline, "where's your curls, gal?" He is told, timidly, that they thought it looked "more respectable so."

"'Bother!—You go right along, and curl yourself real smart,' he added, giving a crack to a ratan he held in his hand; 'and be back in quick time, too! You go and help her,' to her mother—'them curls may make a hundred dollars difference in the sale of her!'"

Can horror go deeper? Yes, one step. The loathsome monster, Legree—of whom in a moment—is presently attracted by her beauty.

"He put out his heavy, dirty hand, and drew the girl towards him"—oh, Mrs Stowe! shall we go on?"—"passed it over her neck and bust; felt her arms; looked at her teeth, and then pushed her back against her mother, whose patient face showed the sufferings she had been going through, at every motion of the hideous stranger."

"The girl was frightened, and began to cry.

"'Stop that, you minx!' said the salesman, 'no whimpering *here!* The sale's going to begin!'"

Presently the mother is put up on the block, and bought by a benevolent purchaser; in descending from it she gazes wistfully at her lovely daughter; and implores her purchaser—"O, do buy my daughter!" He tries to do so; but, alas! she has inflamed the sensual monster Legree: so Lust quietly bids against Benevolence, resolved to secure his victim: "the hammer falls; he has got the girl, body and soul, unless God help her!" But will HE? The chapter ends ominously with a passage from his Word—

When he maketh inquisition for blood, he forgetteth not the cry of the humble!

This Legree also purchases Tom, having quickly appreciated his "points," as a "valleyable nigger:" and here

you may see the *cobra*, uncoiled for you, in all its hideousness.

"He was a short, broad, muscular man, in a checked shirt, considerably open at the bosom, and pantaloons much the worse for dirt and wear, who elbowed his way through the crowd, like one who is going actively into a business; and coming up to the group, began to examine them systematically. From the moment that Tom saw him approaching, he felt an immediate and revolting horror at him, that increased as he came near. He was evidently, though short, of gigantic strength. His round, bullet head, large, light-grey eyes, with their shaggy, sandy eyebrows, and stiff, wiry, sun-burnt hair, were rather unprepossessing items, it is to be confessed; his large coarse mouth was distended with tobacco, the juice of which, from time to time, he ejected from him with great decision and explosive force; his hands were immensely large, hairy, sun-burnt, freckled, and very dirty, and garnished with long nails, in a very foul condition. This man proceeded to a very free personal examination of the lot. He seized Tom by the jaw, and pulled open his mouth, to inspect his teeth(!); made him strip up his sleeve, to show his muscle; turned him round, made him jump and spring, to show his paces.

"'Where was you raised?' he added briefly to these investigations. 'In Kintuck, mas'r,' said Tom, looking about as if for deliverance. 'What have you done?' 'Had care of mas'r's farm,' said Tom. 'Likely story!' said the other shortly, as he passed on."

Legree's exterior only faintly adumbrates the interior horrors of his character, as the reader soon finds out. The monster seems specially pleased with one of his purchases—the sweet Emmeline, who, as they approach "home," feels the hot foul breath of the serpent upon her.

"'Well, my little dear,' said he, turning to Emmeline, and laying his hand on her shoulder, 'we're almost home!' When Legree scolded and stormed, Emmeline was terrified; but when he laid his hand upon her, and spoke as

he now did, she felt as if she had rather he would strike her. The expression of his eyes made her soul sick, and her flesh creep.

"'You didn't ever wear earrings!'" he said, taking hold of her small ear with his coarse fingers.

"'No, Mas'r,'" said Emmeline, trembling, and looking down.

"'Well, I'll give you a pair, when we get home, if you're a good girl. You needn't be so frightened. I don't mean to make you work so very hard! You'll have fine times with me, and live like a lady! Only be a good girl!'"

Alas, sweet Emmeline! motherless Emmeline! was there NO MAN, no father, no brother, near you, to fell the monster to the earth? No, none; and you are close to the residence of your eager and brutal proprietor. There he had destined her as the successor of one of whom he was tired—but whom yet he feared: and that was CASSY; a being whom we did not suppose Mrs Stowe, with all our trust in her previously exhibited powers, equal to conceiving and supporting. She occasionally reminds us of some great passages in Greek tragedy.

"'Come, mistress,'" quoth Legree to Emmeline, having reached the house, and dismissed all his other purchases to their prescribed localities in the plantation. 'You go in here with me!' A dark wild face was seen, for a moment, to glance at the window of the house; and as Legree opened the door, a female voice said something in a quick, imperative tone."

This was—Cassy; and here is her figure.

"She was tall and slenderly formed, with remarkably delicate hands and feet, and dressed in neat and respectable garments. By the appearance of her face, she might have been between thirty-five and forty; and it was a face that, once seen, could never be forgotten—one of those that, at a glance, seemed to convey to us an idea of a wild, painful, and romantic history. Her head was high, and her eyebrows marked with beautiful clearness. Her straight, well-formed nose,

her finely-cut mouth, and the graceful contour of her head and neck, showed that she must once have been beautiful; but her face was deeply wrinkled with lines of pain, and of proud and bitter endurance. Her complexion was sallow and unhealthy, her cheeks thin, her features sharp, and her whole form emaciated. But her eye was the most remarkable feature—so large, so heavily black, overshadowed by long lashes of equal darkness, and so wildly, mournfully despairing. There was a fierce pride and defiance in every line of her face, in every nerve of the flexible lip, in every motion of her body; but in her eye was a deep, settled night of anguish—an expression so hopeless and unchanging, as to contrast fearfully with the scorn and pride expressed by her whole demeanour."

Her relations to Legree were of a mysterious character. The first that Tom saw of her was when she suddenly, and to the surprise of all her fellow-slaves, made her appearance, as one of themselves in the cotton-fields, walking by his side, erect and proud, in the dim grey of the dawn. She works with the others, but infinitely quicker and more effectively. Observing Tom generously transfer some cotton of his own picking to the sack of a feeble female fellow-slave, whom he had just seen brutally maltreated by the driver—she approached him, and transferred some of her own cotton to his bag, telling him in a fearful whisper, "that he knew nothing about that place, or he would not have done what he had: that when he had been there a month, he would have ceased helping anybody, finding it hard enough to take care of his own skin."

"The Lord forbid, *missus*," quoth Tom, instinctively recognising her superiority over the others.

"'The Lord never visits these parts,'" said she bitterly. But her action had been observed by the driver, across the field: and flourishing his whip, he came up to her. 'What! what!' he said to the woman, with an air of triumph, 'You a-foolin'! Go along! yer under me now—mind yourself, or ye'll cotch it!' A glance like sheet-lightning

suddenly flashed from her dark eyes; and facing about, with quivering lip and dilated nostrils, she drew herself up, and fixed a glance, blazing with rage and scorn, on the driver. 'Dog!' she exclaimed, 'touch me, if you dare! I've power enough yet to have you torn by the dogs, burnt alive, cut to inches!—I've only to say the word!'

"What de debel you here for, den?" said the man, cowed and retreating a step or two. 'Didn't mean no harm, Misse Cassy!' and he slinks to another quarter of the field."

Weighing-time comes in the evening.

"So," says Legree, to his myrmidon, "Misse Cassy did her day's work?"

"Iss! she pick like the debel and all his angels!"

"She's got 'em all in her, I believe!" said Legree; and growled a brutal oath."

At length it is Cassy's time, and she delivers her basket to be weighed, with a haughty, negligent air: Legree looking in her eyes with a sneering, yet inquiring glance. She fixed her black eyes on him steadily—her lips moved slightly, and she said something in French. What it was, no one knew, but the expression of Legree's face became demoniacal; and he half-raised his hand, as if to strike—a gesture which she regarded with fierce disdain, and turned, and walked away. Then Tom comes up; and, poor fellow, for once, we rejoice to say shows something like a spirit: for, being ordered to try his hand on flogging the poor female slave, falsely accused of not having picked her quantity, he steadfastly refuses; and after having received a shower of blows from Legree, firmly repeats, "This yer thing I can't feel it right to do," wiping the blood from his face; "and, massa, I *never* shall do it—*never*!" All the shivering wretches around exhibit consternation at his audacity; and Legree looked stupefied and confounded; but at last he burst forth:—

"What, ye blasted black beast! tell me ye don't think it *right* to do

what I tell ye! What have any of you cussed cattles to do with thinking what's right! I'll put a stop to it. Why, what do ye think ye are? Maybe ye think ye'r a gentleman, Master Tom, to be a-telling your master what's right, and what an't; so you pretend it's wrong to flog the gal?"

"I think so, mas'r," said Tom; 'the poor crittur's sick and feeble, 'twould be downright cruel, and it's what I never will do, nor begin to, mas'r. If you mean to kill me, kill me; but as to my raising my hand agin any one here, I never shall: I'll die first.' Tom spoke in a mild voice, but with a decision that could not be mistaken. Legree shook with anger; his greenish eyes glared fiercely, and his very whiskers seemed to curl with passion; but, like some ferocious beast that plays with its victim before he devours it, he kept back his strong impulse to proceed to immediate violence, and broke out into bitter railery. 'Well, here's a pious dog, at last, let down among us sinners! a saint, a gentleman, and no less, to talk to us sinners about our sins! Powerful holy crittur he must be! Here, you rascal; you make believe to be so pious, didn't you never hear out of yer Bible, "Servants, obey your masters?" An't I your master? Didn't I pay down twelve hundred dollars cash for all there is in yer old cussed black shell? An't yer mine, now, body and soul?' he said, giving Tom a violent kick with his heavy boot; 'tell me!' In the very depth of physical suffering, bowed by brutal oppression, this question shot a gleam of joy and triumph through Tom's soul. He suddenly stretched himself up, and looking earnestly to heaven, while the tears and blood that flowed down his face mingled, he exclaimed—'No, no, no! my soul an't yours, mas'r! You havn't bought it; ye can't buy it; it's been bought and paid for by One that's able to keep it. No matter—no matter, you can't harm me!'

"I can't!" said Legree, with a sneer; 'we'll see. Here, Sambo! Quimbo! give this dog such a break-

ing-in as he won't get over this month.'

"The two gigantic negroes that now laid hold of Tom, with fiendish exultation in their faces, might have formed no unapt personification of powers of darkness. The poor woman screamed with apprehension, and all rose, as by a general impulse, while they dragged him unresisting from the place."

Sambo and Quimbo are two huge black fiends, each savage, sycophantic towards Legree, rivals of each other in his good graces, and abhorring poor Tom, whom some expressions of Legree show to have been designed to become his chief overlooker.

While Tom is lying in an exposed outhouse at midnight, groaning and bleeding alone, the night damp and close, the thick air swarming with myriads of mosquitoes, which increased the ceaseless torture of his wounds, whilst a burning thirst—a torture beyond all others—filled up the uttermost measure of physical anguish—

"Oh, good Lord, *do* look down! Give me the victory—give me the victory over all!" prayed poor Tom, in his anguish, when a footstep is heard behind him—the light of a lantern flashes in his eyes, and he recognises Cassy, come to him like a ministering angel. At length she sits beside him, when he has become somewhat more easy and composed for a while under the soothing applications of his companion; and she mutters a few words, in rejoinder to his feeble but trustful exclamations, of despair and atheism—"There's no God, or he's taken sides against us; all goes against us, heaven and earth! Everything is pushing us into hell! Why shouldn't we go?" In a few scorching words of misery she tells him that she, "a woman delicately bred," has been for four long years in the hell of Legree's presence and power, her whole body and soul, cursing every moment of her life, the slave of his brutal passions; "and now he has got a new one—a young thing, only fifteen! And she's brought her Bible here—*here*, to hell with her!" She

adds, that she has witnessed scenes of savage, of mortal cruelty, which "would make any one's hair rise, and teeth chatter to hear—but it is useless resisting. There's not a white person who could testify if you were burned alive!" She lets fall a hint that sweet Emmeline is trying bravely to struggle against her fate—at present!

She gives Tom an outline of her history. She had been the idolised daughter of a lovely slave, and educated in the most expensive manner at a convent; but her father, before he could fulfil his intention of freeing her, had died of cholera; and she was sold to a man who concealed from her that he had given two thousand dollars for her. Imagining that she was his free choice, and he handsome, fond, and indulgent, she lived a little while with him as in Paradise, and had two children—a boy, Henry, and a girl, Elise. A cousin of his caught sight of her and resolved to possess her; succeeded by shameful arts in alienating his affections from her, and then persuading him to sell her, with her two children. He forced her, recoiling from his embraces, to live with him, and sold off her two idolised children. In a moment of frenzy—All she recollects is, that "something snapped in her head—there was a great bowie-knife gleaming on the table. * * * She caught it—flew upon him—all grew dark, and she knew nothing more till she woke, long afterwards, when she found that he had left her to be sold; and, to realise the most from her, had secured to her good attendance." As the fever left her, "they made her get up and dress every day; and gentlemen used to come in, and stand, and smoke their cigars, and look at me, and ask questions, and debate my price! They threatened to whip me if I were not gayer, and didn't take pains to make myself agreeable." She was ultimately bought by a planter, a Captain Stuart; and the child she had by him, so like her lost Henry! when two weeks old, she kissed, cried over, and—poisoned with laudanum. "I held him close to my heart, while he

'slept to death!' At length, Captain Stuart dies of fever. "Everybody died that wanted to live; and I, that wanted to die, *lived* to be sold, passed from hand to hand, till I grew faded, wrinkled, had a fever—and—this wretch (Legree) bought me, and here I am! * * * In the judgment-day, I will stand up before God a witness against them that have ruined me and my children, body and soul! When I was a girl, I thought I was religious. I used to love God and prayer! Now, I'm a lost soul, pursued by devils that torment me day and night. They keep pushing me on—and—I'll do it too, some of these days!" she said, clenching her hand, while an insane light gleamed in her heavy black eyes.

Legree in his lair resembles a huge tiger. As painted by the author, with graphic force, sitting in his desolate apartment, drowning reflection in brandy-and-water, admitting Sambo and Quimbo to his savage debauches, and in their absence having his fierce bloodhounds for his companions (anything better than being alone), it seems wonderful that any human being could obtain over him any kind of influence, and much less ascendancy; yet Cassy has, in spite of himself, acquired—"the kind of influence which a strong impassioned woman can ever keep on the most brutal man." Of late, however, she had become "more irritable and restless under the hideous yoke of her servitude, and her irritability sometimes burst forth in the ravings of insanity; and this liability made her an object of dread to Legree, who had that superstitious horror of insane persons which is common to coarse and uninstructed minds. When he brought Emmeline to the house, all the smouldering embers of womanly feeling flashed up in the exhausted heart of Cassy, and she took part with the girl."

One night, very late, she was gliding about unknown, and came to the window of the room where he was wildly carousing with the twin-fiends, Sambo and Quimbo. "She rested her small slender hand on the window be-

hind, and looked fixedly at them, a world of anguish, scorn, and fierce bitterness in her black eyes," as she saw them "singing, whooping, upsetting chairs, and making all manner of ludicrous and horrid grimaces at each other. '*Would it be a sin to rid the world of such a wretch?*' said she to herself." Many subsequent scenes in his career, passing before us, must more and more have inclined Cassy to answer the fearful question in the negative; as though it had shaped itself—"Is it any harm to kill a rattlesnake that has located itself near your house?"

"When he first bought her, Cassy was, indeed, a woman delicately bred; and then he crushed her without scruple beneath the hoof of his brutality. But as time, and debasing influences, and despair, hardened womanhood within her, and waked the fires of fiercer passions, she had become, in a manner, his mistress; and he alternately tyrannised over, and dreaded her. This influence had become more harassing and decided, since partial insanity had given a strange, weird, unsettled cast to all her language."

In fact, her tormentor was on one occasion much nearer a ghastly climax than he had any idea of; for she had drugged his brandy, left him helpless, the back door unlocked, and then gone silently, at midnight, to Tom, to tell him that the hour of liberty was at hand.

" 'I shall have it, Misse, in God's time,' said he.

" 'Ah, but you may have it to-night!' said Cassy, with a flash of sudden energy. 'Come on!'

"Tom hesitated. 'Come!' she whispered, fixing her black eyes on him. 'He's asleep—sound! an axe is there! I'll show you the way! I'd have done it myself—only my arms are so weak! Come along!'

" 'Not for ten thousand worlds, Misse!' said Tom firmly, stopping, and holding her back. * * * He flings himself on the floor, grasping her arms, imploring her for the love of God to abstain. 'We must suffer, and wait the Lord's time!'

" 'Wait !' said Cassy. 'Haven't I waited ? till my head is dizzy and my heart sick ? What has he made me suffer ? What has he made hundreds of poor creatures suffer ? Isn't he wringing the life-blood out of you ? I'm called on ! I'm called on ! they call on me ! His time's come, and I'll have his heart's blood !' "

" 'No ! no ! no !' exclaimed Tom, holding her small hands, which were clasped with spasmodic violence. "

The slave triumphed, and saved the life of—his murderer. He suggests to Cassy the attempt to escape, however desperate, "without blood-guiltiness ;" and while he is speaking to her, "there flashed through her mind a plan so *simple* and *feasible* in all its details, as to awaken an instant hope." We suspect that our readers will hardly be of her opinion. This was the nature of "the stratagem" which had occurred to her. Legree was superstitious ; and it is evident that some not recent and barbarous murder of one of his slaves, had largely developed his superstitious fears, and especially with reference to a particular apartment. Cassy, having taken Emmeline into her counsels, resolves to terrify Legree with the idea of this room being haunted, in order that, having a secret access to it, she may, when the proper time arrives, make it her safe and undisturbed retreat. She forthwith commences operations by training Legree's mind into a more and more terrified mood with reference to this apartment, causing all sorts of strange, dismal, unearthly noises to issue from it, ghosts to be seen gliding in white out of it, and so forth. Thus far she succeeds ; and having, in the meanwhile, made up two little beds in a huge box in the dreaded room, and provided food, candle-light, and clothes for their journey, she puts her scheme in operation. Late in the evening, she and Emmeline affect to make their escape, contriving to be seen in the act by Legree ; on which he gallops homeward—orders out Sambo and Quimbo, and a posse of other willing myrmidons, and also the bloodhounds, and

away they start on their cruel and perhaps bloody errand. In the mean time, the supposed fugitives have returned home unobserved, and taken up their abode in the haunted chamber. There they listen to the hunting-party, men, horses, dogs, returning wearied and disappointed. The next day the search is renewed, with the like ill success ; and, after a day or two's seclusion in their hiding-place, near which ghosts are seen to glide, and from which unearthly noises issue, the adventurous pair start on their perilous journey, Cassy disguised as a Creole Spanish lady, dressed entirely in black, and Emmeline as her servant. She found no difficulty in assuming and sustaining the character. "Brought up from early life in the highest society, her language, air, and movements were all in accordance with it ; and she had still sufficient left of her once splendid wardrobe and sets of jewels, to enable her to complete her personation. A small black bonnet on her head, covered by a veil thick with embroidery, concealed her face." It was near sunrise when the two terrified and breathless travellers paused, for a moment, in a little knot of trees near the town. Having purchased a trunk in the outskirts, she requested the seller to send it with her ; and thus, escorted by a boy wheeling her trunk, and Emmeline behind her carrying her carpet-bag and sundry bundles, she made her appearance at a small tavern, like a lady of consideration, and there encountered George Shelby, who, with herself, was awaiting the arrival of the boat. He handed her courteously to it, and provided her with a good state-room ; but Cassy found it expedient, on the plea of indisposition, to keep her room and her bed, sedulously attended, it may be imagined, by her maid Emmeline, during the whole time they were on the Red River. Arrived at the Mississippi, they entered the good steam-boat Cincinnati. How she disclosed herself to George Shelby, and became acquainted with Madame de Thoux ; how the latter proved to be Emily,

the long-lost sister of George Harris, and Cassy the mother of George's wife—somewhat compendious work, it must be owned—has been seen. It was, in truth, as the author seems to have suspected, *rather* “a singular coincidence in their fortunes.” In due time they find their way to Montreal, where George and Eliza had established themselves in a neat tenement in the outskirts of the town, very happy and contented, he having found constant occupation in the shop of a worthy machinist. Cassy is now ending her days happily, “a devout and tender Christian.” Emmeline continued with them; and, on her passage to France, her beauty captivated the first mate of the vessel, and, shortly after entering the port, she became his wife. Before, however, this happy result has been effected, has occurred the crowning act of the tragedy—the martyrdom of poor Tom; who, being suspected by Legree of knowing of their escape, will not deny that he was privy to it, but will afford him no information. On this Legree, mortally infuriated, tells him that he “means to kill him”—“I’ve made up my mind to kill you.”

“It’s very likely, mas’r!” said Tom, calmly.

We shall spare our readers the frightful scene, as one of simple butchery. One might as well describe, in detail, the slaughter of an ox by the slaughterer and his two assistants. He is felled to the ground by a blow of Legree, and Sambo and Quimbo flog him to death. These two grim instruments of their master’s murderous vengeance are filled with sudden remorse, when they shortly after revisit their victim, and hear from him words of resignation and forgiveness. They ask him, “Who is *Jesus*, anyhow?” and on Tom, in a heavenly spirit, telling them, they ask *Him* for mercy.

“Poor critters!” said Tom, “I’d be willing to bar all I have, if it’ll only bring you to Christ! O Lord! *give me these two more souls, I pray!*” To very many of our readers, these expressions will appear somewhat

forced and peculiar; whilst others may recognise in them language with which poor Tom had become familiar in those scenes of religious exercise to which, we are told, he had been accustomed for four years before his introduction to the reader. “Tom,” said Mr Shelby to Haley, “is a good, steady, sensible, pious fellow. He got religion at a camp meeting, four years ago; and I believe he really did get it. I have trusted him, since then, with everything I have: money, house, horses—and let him come and go round the country; and I always found him true and square in everything.” If such results follow “camp meetings,” they might be advantageously tried, and on a large scale too, in this country. Some little time afterwards occurs the interview between dying Tom and young Mr Shelby, who had come to ransom him.

“‘Who—who—who shall separate us from the love of Christ?’ he said, in a voice that contended with mortal weakness; and with a smile he fell asleep.”

Regarded merely as a stroke of art, this closing scene may be contemplated with qualified feelings; but we shall offer no strictures upon what has evidently been conceived in a high religious, a nobly human spirit, and executed with no little power. Viewed in this light,—and it ought to be viewed in no other, by a critic who has seized the scope and entered into the spirit of its author,—objections to the development of Uncle Tom’s character melt away. He is not drawn to meet the views, or satisfy the exacting spirit of mere worldly persons, sickly novel-readers, or conceited supercilious critics. No, Tom is conceived in a lofty spirit, and adorned with all the meekness, the gentleness, the long-suffering, which can be drawn from the inexhaustible sources of our holy religion alone; he is set sublimely on a pinnacle to attract towards his oppressed race, represented by his crushed and bleeding form, the pitying eye of Christendom—to awaken, to encourage, to warn. “Suf-

fering is," indeed, "the badge of all their tribe;" and Europe has felt it to be so more strongly and directly, since the publication of this work, than it ever felt before. In the soft, glorious sunlight of Christian sympathy, the blackness of our poor brother's skin—his skin torn with the incessant lash—disappears. Uncle Tom is actuated by religious principles which will not admit of his speaking or doing otherwise than he is represented as speaking and doing. His condition was that of a slave; it was a very hard one often, but had not always been such; and he was on the eve of escaping from it by lawful means, more than once, but the will of Providence had decreed otherwise. The sudden death of St Clare was permitted to consign unoffending Tom to the hideous Legree. But is not such an occurrence frequent in God's ordinary all-wise, but inscrutable direction of human affairs? Presented to us under the conditions dictated by the objects and purposes of Mrs Stowe, how could she, without outraging propriety and defeating her whole, her only, and righteous purpose, have represented him, for instance, organising a revolt against the oppressor, in the course of which he and his maddened fellow-sufferers would have imbrued their hands in the blood of Legree? With Mrs Stowe's proved powers of description, and her mastery over the feelings, she could have brought before our eyes characters, scenes, and actions which only St Domingo could have paralleled! Instead, however, of playing the part of a mad incendiary, she has calmly and magnanimously addressed herself to the tribunal of public opinion, to the sense of justice, and of religion, by which all civilised mankind profess to be guided. She solemnly appeals to "the whole American Church, of all denominations, unitedly to seek the entire abolition of slavery throughout America and throughout Christendom." To "every individual Christian, who wishes to do something for the abolition of slavery," she says—"Begin by doing what lies in your

power for the coloured people in your vicinity. * * * The contest is to be carried on 'with love unfeigned'—through every degree of opposition and persecution, a divine unprovokable spirit of love, which must finally conquer. * * * We must love both the slaveholder and the slave, never forgetting that both are our brethren. * * * We must use, as means, an earnest application of all straight-forward, honourable, and just measures, for the removal of the system of slavery. Every man in his place should remonstrate against it. All its sophistical arguments should be answered, its biblical defences unmasked, by correct reasoning and interpretation. Every mother should teach the evil of it to her children; every clergyman should fully and continually warn his church against any complicity with such a sin." *These* are the weapons, not carnal, but of holy temper, with which Mrs Stowe would enter upon this warfare; and who shall rebuke her, and say her nay? Not *we*. We say to her, with a tender recollection that it is a woman of whom we are writing, All hail, thou impersonation of Christian love and purity! Thou very genius of philanthropy! Verily thou wilt *have thy reward*. Not merely in the praises of men, though *they* have been accorded already with an almost unanimous and universal assent; but in the reflections of a chastened and subdued—a warm, a loving, and devout spirit.

Taken as a *literary* whole, "Uncle Tom's Cabin" is a work standing before the critical eye in large proportions, but somewhat irregularly and inartificially disposed; exhibiting, here and there, minor and easily removable marks of haste, and inexperienced workmanship. It would have been easy to contrive incidents, and that without deranging her general scheme, which would have kept curiosity on the stretch from first to last, and secured a sort of poetical justice which might have satisfied the minds of many of her readers;—by dealing, for instance, with Marie St

Clare, a beautiful but venomous little reptile, and the huge speckled monster Legree, in a spirit of retribution, making their own acts entail upon them condign and appropriate punishment; but how could that have aided the declared moral purpose of the writer? She has done well, on the contrary, in representing a Haley, a Legree, a Marie St Clare, as still—*cumbering the ground*, as so many of the centres of innumerable circles of despotic barbarity.

The main defect of the construction of her work as a "story," for such she terms it, is, its want of connectedness. The reader is hurried incessantly from side to side of the dividing line between the fortunes of Uncle Tom, and those of George and Eliza Harris, with the episodic incidents depending on them; coming to each with sympathies attuned to the other; which, again, as soon as they have begun to be attracted to the new object, are suddenly dissociated, to address themselves to the one which they had but recently quitted so abruptly.

With all its defects, however, this book is an instrument worthy of contributing, in its way, to effect a grand purpose, to attack and subvert a system: the only condition, in this view, being, that it is founded, not upon exaggeration and misrepresentation, but upon TRUTH. The moment that the work had attracted universal notice, it was obvious that it must challenge attention to the point of—TRUE or FALSE in its representations of the condition of American slavery. Mrs Stowe has cheerfully accepted the challenge thrown out to her, accepted it in a calm and temperate spirit, and with the resolute confidence of one believing herself right. She formally consents to have her book tried by the test proposed, always protesting that she has painted slavery as it is—has done ample justice to large portions of humane Southern slaveholders; but insisting that that is no answer to her case, which is, that the system is one altogether opposed to the spirit of Christianity, and subversive of the

rights, and destructive of the best interests of man. It is one, she would say, that tends to stamp out, in every newly-born slave, the noble image of his Maker, to depress him beneath the level of humanity; and it is no answer to this to assert, as is asserted by one of the keenest and sternest of her opponents, that "the peculiar falsity of the book consists in making exceptional or impossible cases the representatives of the system."*

To establish her great principle, on the one hand, and to controvert by evidence, on the other, the charge in point of fact, of having made the exception the rule, she has published what she calls "A Key to Uncle Tom's Cabin," which is, in fact, simply a series of *Proofs and Illustrations* of the truth of her representations. We have examined this Key to the Cabin with some attention, and are of opinion that its alleged facts are such as must be answered; or those whose accusations provoked its publication, will have succeeded in only placing a professed fiction upon the solid basis of fact. No one who reads this Key will tolerate being simply told, that "Uncle Tom's Cabin" is founded on falsehood. She quotes, evidently, and even avowedly, under the guidance of gentlemen of adequate experience and knowledge of the subject, from the authentic records of judicial decision, dealing with cases so appalling as, for a moment, even to make one think Legree painted in colours less dark than he might have been; and also exhibits a vast mass of documents which cannot be disposed of, but by counterproof. We, of course, can deal with such statements but as we find them; knowing that they derive their value from the trustworthiness of a conscientious writer, *conclusively confirmed by the absence of substantial disproof*. This volume, in a word, we commend to the serious consideration of every reflecting European and American reader of "Uncle Tom's Cabin."

It were idle to class among these latter those who read simply to in-

* See the *New York Inquirer*, Nov. 5, 1852. *Key*, 97.

dulge a spurious whimpering sentimentality, or to have a morbid curiosity stimulated and inflamed by novel scenes of suffering and horror. But the Christian statesman, the enlightened politician, in either hemisphere, is bound, we think, to deal with the existence of this book, and the extensive effects produced by it, as a signal FACT. Great as are its literary merits, they are by no means sufficient, of themselves, to account for the universal attention which it has excited. It is because, to descend to a homely illustration, this book has acted like the sudden flash of the policeman's lantern on a scene of secret midnight crime: it has painted in such vivid colours a condition of humanity hidden from European observation, as has attracted and fixed upon it the startled eyes of thinking Europe,—of a FREE Christian people. In vain is it to hang beside it hasty recriminatory daubs of countervailing white slavery, or of the charms of slavery, as exhibited by a *quasi*-paradisaical state, where such monsters as Legree, Mrs St Clare, Haley, Marks, and Tom Loker, exist not. All such attempts have already proved, as might have been anticipated, ridiculous failures, as far as they had been designed to stultify and falsify "Uncle Tom's Cabin," and divert from it the stern eye of public morality. How to deal with slavery, is a tremendous problem for enlightened Christian statesmanship. It cannot tolerate the meddling of an unfortunate, impulsive, unreasoning, unreflecting, however ardent and generous, so-called humanity. True humanity, in this instance, consists in a sincere, comprehensive, deliberate, and resolute effort to rouse the PUBLIC OPINION of America—of a great and enlightened nation, on behalf of its slave population; and we believe that that public opinion will ere long find, with more embarrassment and

danger the longer the discovery takes to be made, that slavery is an ulcer, a foul spreading ulcer, eating its way, perilously, to the very vitals of the body politic.

Will slavery—American slavery—will slavery at all—be in existence on the earth, a century hence? It is a vast question, and we will not presume to answer it. Perhaps our imaginary brother of the twentieth century may read what is here being written by his brother of the nineteenth, and applaud our caution. Slavery *may* then have become a thing of the past; or, in the fortunes of the world, in the mysterious, sublime, and even then unaccomplished destiny of the human race, that institution may still have its monstrous strangling coils encircling large and helpless sections of the family of man.

But if our shadowy brother of 1953 come to any other conclusions than are favourable to the intelligence of us of 1853, in respect of our reception of "Uncle Tom's Cabin," as Maga will doubtless be then in flourishing existence, we look to our lineal successors, in our seat of critical justice, to take up the cudgels for us, and vindicate our opinions, and cautious vaticinations. And, in the mean time, Harriet Beecher Stowe, be it known a century hence, that though by no means blind to your little literary shortcomings, we are ashamed of neither yourself, nor our reception of your book; that one not of the least important names of the present century is your own, already, and though you should never write another book. We doubt, indeed, whether you ever will do so: whether, at least, it will, or can be, a great book; for this one embodies your life-long experiences, heart-yearnings, and long-cherished thoughts. Your whole soul is wrapped up in its single noble purpose; so, *Sis fecmina Unius Libri*.

CALAIS:

MY ADVENTURES, PLEASURES, AND EMBARRASMENTS— THITHER, THERE, AND BACK.*

LONDON, September 1837.

DEAR —,—Conceiving that at that particular time of the year, and juncture of public affairs, London would not miss me for a fortnight or so, I slipped quietly away to Dover with my wife and little son, and his attendant, on the 10th of August last. On the ensuing Sunday afternoon, about two o'clock, you might have seen me perched upon the summit of Shakespeare's Cliff, gazing from that silent, celebrated eminence, through the clear air, at the outline of the French coast, dim in the distance. Never had I seen it before, and many things did the sight of it suggest to a thorough Englishman. Upwards of thirty years had I lived in the world, without having seen more of it—I am almost ashamed to write it down—than England, Wales, and Scotland. Never had I been so near France—and shall I lose this opportunity, thought I, as I discerned the Calais packet like a little hissing tea-kettle making its way for Dover, of placing my foot upon Monsieur's territory—and that, too, at ancient Calais, *once ours*; of hearing foreign people speaking a foreign language in a foreign place—even if it be for but a day—of seeing, in short, how they carry on the war?—Hem!—To Calais will I verily go on the morrow by the eight o'clock boat, if I am alive and well,—nay, peradventure my wife would choose to accompany me; and if she do, I am sure my little son shall not be left behind—and then his maid must go—whew! here was a regular

affair upon my hands all at once! *Dis sic visum.* Then arose before my mind's eye the usual train of *desagrémens*—searching, and registering, and so forth:—but my mind was made up, and could not easily be turned from this great enterprise.

Monday the 14th August opened calmly and beautifully. The sea seemed smooth as a polished mirror—a sight that not a little comforted me on account of my companions, as we passed along the shingly shore a little after seven o'clock, on our way to the harbour, where, lo! *two* steamers were making sputtering and smoking preparations for starting—one an English boat, the other the French mail-packet.

"Sare," said in a low tone the captain or steward of the latter, stepping up to us as we approached—"if you shall go wit me—bien!—we shall take you for five shilling—de oter sharge you ten shilling—and, certainement!—we shall be dere one half-hour first—Sare! we carry de maille!" he added, with an important air.

"No—I—I think," said I, hesitating—"I think I"—

"Beautiful boat, sare! mi ladi, *ver* fine boat!"

We passed on to make inquiries into the real state of the question as to fares; and I soon found that the Frenchman had taken the great liberty to tell me a greater lie; for the English boat charged only five shillings instead of ten shillings; and her captain seemed such a hearty thorough-going Englishman, that

* *Blackwood's Magazine*, 1837.

forthwith we stepped down the accommodation-ladder—and were soon on our way, having the start of the Frenchman, who did not follow for several minutes. At length we beheld Monsieur coming out of the harbour; and I began to feel a little curious to see which was the better sailer—union-jack, or tricolor.

“Which is the quicker boat?” I asked of the captain, as we both stood looking over the stern at our companion.

“Why—much about the same; perhaps—if there is any difference, why, sometimes one has it, and sometimes the other, you see!”

“Which will get to Calais first today, d’ye think?”

“Why, *we* shall—not a doubt of it. Monsieur won’t fetch up *this* start, anyhow—let him puff and blow as hard as he likes!”

“His is a very good-looking boat, eh?”

“Ay, ay,—no doubt; all outside, though—like all the French! Our inside and engines are five times the strength of his. His boat is just fit for this sort of thing; but I’d go round the world in mine, blow me if I wouldn’t!”

For about twelve miles the two boats preserved the same relative distance; and I felt a kind of school-boy’s interest in standing and watching our competitor—whom, by-and-by, I regretted to see certainly beginning to gain upon us. By the time that we were about two-thirds on our way, the fellow had positively got up to us.

“Ah, captain—’tis no use; we’re overmatched; I’m afraid the tricolor is rather too much for the union-jack!”

“Tricolor a match for the union-jack! Excuse me, but she *ain’t*—and none knows it better than she, or she’s had a mighty lot of licking without learning her lesson!” he added, with a disdainful air.

“But still I’m afraid that on *this* occasion”

“If she does get in first, it’s because *we* don’t try it on with her. I don’t

care a button which gets into harbour first. What does it signify? I never took the trouble to race with her!”

This might be; but shortly afterwards he sauntered apparently carelessly forwards, and in passing evidently whispered something to the engineman below—and we certainly a little increased our speed. By-and-by I observed the captain looking occasionally with affected indifference at his rival—somewhat stimulated, nevertheless, by the interest his passengers appeared to take in what looked uncommonly like a race between the two boats. But ’twas of no use—Monsieur gradually passed us! His triumph, however, was of short duration; for as soon as ever the mist, which had come over us suddenly, completely hiding the French coast from sight, began to clear away, lo! Monsieur was seen to have run himself a-ground, having mistaken his course in the mist, and, it might be in the eagerness of the race, omitted to sound as he went on; through the which negligence we also were within a hair’s-breadth of incurring the like mishap!—but a vigorous effort—the helm ported—the lead in the water every half-minute, got us out of our danger—and we left our friend to enjoy his novel and interesting position at his leisure. So that, after all, we got first into harbour, our captain carelessly hinting something about superior seamanship.

The mist melted away suddenly—and then we found ourselves making direct for Calais harbour, running along, at about a quarter of a mile’s distance, a low sandy shore, with no signs of human existence. Calais lies low and far in; it has rather a pretty appearance from the sea. The pier, which is narrow, and of wood, comes out about a mile, making an excellent entrance to the harbour. There were two or three well-dressed men standing at its extremity, one of whom shot a gull as we passed, which fell into the water within a few feet of me.

After paying our fare to the steward (£1 for all of us), I obtained from him a little French silver—some five-franc

pieces, francs, and half-francs, as ammunition with which to open the campaign.

"May I ask, sir, where you're going to put up at Calais," said he, "as you've never been in France before?"

"Ah, by the way, that is a question. Why, really, what would you advise me to do? I've made no arrangements whatever! What hotel?"

"Why, sir, there are plenty of hotels; there's the Hotel Bourbon, and Dessein's, and Meurice's, and Quilliacq's, and Roberts' English Hotel—all good ones."

"I should prefer a French one, as I want to see as much of the French style of doing things as I can in a few hours."

"Then Quilliacq's is a very genteel, comfortable family hotel, sir—quite first-rate;" and upon it I decided. "And now, sir, you'll see a great hubbub when we land," he continued. "I suppose, in course, you speak French?"

"Why—not, perhaps, exactly—that is, not *fluently*, you understand—hem!"

"Well, well, sir, it don't much signify, for they, most of them, speak English—but see, we're coming to. What luggage have you on board, sir?"

"Only that carpet-bag—I brought as little as possible."

"That's right, sir. You must leave it on deck, sir, and the Commissioner will fetch it for you in about an hour's time. When you're going ashore, and a lot of people are shouting out and jabbering to you, only call out, '*Quilliacq!*' and you'll not be troubled any more. You'll see a man in a blue smock, who'll come and lead you away—he is M. Quilliacq's servant."

By this time we had got alongside; an accommodation-ladder was thrust down; forthwith a military-looking personage with a brisk, important air, leaped upon deck, spoke rapidly in French to the Captain, and remained at the foot of the ladder as we ascended. Sure enough we did encounter a strange clamour—not a word could I understand; so, following the steward's advice, I called out, with an imperative air, "Quilliacq!" It was just as he had said. A man in a

blouse came instantly forward, touched his hat, exclaiming in French, "I am from M. Quilliacq, sir—follow, if you please!" and in a twinkling we all stood upon French ground. Following our guide, and flanked by a personage in military costume,—a glazed, sugar-loaf-shaped black cap, green dress, with a belt and small sword—who kept his eye constantly upon us, we marched—I, my wife, child, and servant, to the passport-office, about thirty yards' distance from the spot on which we had landed. I fancied myself under arrest, as, in point of fact, we were for the time being. Into the "bureau" we entered forthwith, and were arranged before three gentlemen with great books open before them.

"Votre nom et designation?"

I gave my Christian and surname, which he wrote down.

"Quel age avez-vous?"

I told him—down it went.

"Votre profession, Monsieur?"

"Avocat!" quoth I, and he noted it down with rather a more courteous air than he had before exhibited.

"Votre femme," pointing to them severally, "enfant, domestique, Monsieur?"

"Oui, oui!"

"Sare, your passport, if you plizz!"

I told him that we neither had nor required one; on which he bowed politely, motioned us to the door, and we sallied forth, once more at our liberty, attended only by M. Quilliacq's emissary, who walked before us in silence. It was now about eleven o'clock, and the day was bright and cheering. I felt in a most buoyant and exhilarated mood. I was in an entirely new scene—nothing English or English-like about us. The curious antique entrance-gate, celebrated by Hogarth—the appearance of the houses—the narrow streets with no flags—the strange aspect of the shops, with inscriptions and sign-boards all in French—the rapid unintelligible pronunciation of the same language on all sides of us—the women, without any bonnets, but all in snowy prim-looking caps, and little blue cloaks;

then a swarthy little soldier of the line, in green jacket and red trousers. Yes, here we were in Calais—old Calais; it sounded big, but we were unquestionably now in a foreign country (!), and standing upon ground *the close, soil, and freehold whereof*, were once ours! And it was just as I had been remarking the rolls of bread a yard long, or so, in a baker's shop, that it occurred to me, for the first time, to inquire into the state of our financial affairs. Certainly I had managed them with signal prudence; for £3, 10s. was positively all that we had about us. We were in consternation.

We neither of us could guess on what scale our expenses were likely to be; and I felt rather flustered as we were ushered into the large old-fashioned "Hotel Quilliacq," where we were instantly attended by Monsieur and Madame, and one or two of their household. We were shown at once into a suite of apartments on such an extensive and handsome scale as made me instinctively thrust my hand into my pocket, to ascertain that even my very little store was safe. Moved by what I was there reminded of, I contrived to find some objection (!) to the rooms that were being exhibited to us, and we were shown up to others, certainly somewhat inferior, but still exceedingly comfortable, and rather elegantly furnished—a sitting-room and two bed-rooms, *en suite*. These we chose.

"Madame ne desire-t-elle rien?" inquired the waiter, obsequiously, as we sat down. We caused him to understand, that as we had just come off the sea, a little cognac, some water, and a few biscuits would satisfy our present necessities. "And vat vill you dine, sare — and when vill you have, sare?" he inquired — for, observing me incapable of addressing him at all events with fluent eloquence (!) in his own language, he began to murder mine. But I was delighted, and inquired, "What have you?" He presently produced a bill of fare, and, after due consideration, we determined on having, first, a sole, with a very fine long name; secondly,

a fricandean; thirdly, a roast fowl; fourthly, a sweet omelette; a pint of vin ordinaire (*i. e.*, weak red ink), and a bottle of Champagne—Sillery—all to be ready by five o'clock. Thus charged, he withdrew; and I took the opportunity again to count my store, and curse my folly. There it was—£3, 10s. 6d.—but we intended to return at eight on the ensuing morning; yet there was the fare back to pay out of it, which would leave us about £2, 7s. to meet all contingencies! It *might* be enough; but how did we know the rate at which we should be charged—the imposition that might be attempted?

"What is to be *done*?" inquired my wife, with calm despair.

"Why," I replied, after a puzzled pause, "do you think we could ascertain *beforehand* what they charge for the rooms and dinner?"

"Nonsense! nonsense! It would be beggarly to a degree."

"Well, then, why not tell them our real situation—the oversight I have committed?"

"Poh! They would think us—impostors! especially, by the way, when they see the immense quantity of luggage we have brought—a carpet-bag not half filled!"

Certainly that was a clincher; but nevertheless, after looking for a few moments in my wife's anxious face, I could not help bursting out a-laughing.

"Indeed, it's no laughing matter, I can tell you."

At that moment, after a tap at the door, entered the Commissionaire, a gentlemanly-looking person, who, with a polite bow, came up to me, and said, "Sare, if you plizz, your key."

"Eh! *my key*! Pardonnez — my key? Why? What key?" I inquired, infinitely surprised.

"Oh, sare," he replied, smiling, "it is the key of your baggage, at the bureau—to be search" —

"Oh—bien! I understand," I answered, much relieved—surrendered the key, and he withdrew. To return to my money, or rather, *my want* of money. I would at that moment have

paid fifty per cent interest for the loan of a £5 note till that time on the next day. Suddenly it occurred to me, that if I could find out the Captain of the steamboat he might be inclined to assist me in this—to me not laughable—emergency; for though he had never seen me till that morning, I could take him, immediately on my return to Dover, to my lodgings, and repay him with interest whatever sum he might choose to advance us. Forth I sallied on that errand, and after some difficulty found my way to the steamboat, on which, however, there was only an old man scouring the deck; and he informed me that he knew neither where the Captain was, nor when he would return. That was gratifying!

I had nothing for it but to return to the hotel, and trust that something would turn up in our favour. Let the worst come of it—'twas but stopping at Calais till I could receive a remittance from London; for though we had sufficient funds at Dover, they were accessible to none but ourselves; but then, again, there were reasons why I did not think it prudent to delay even for a few hours unnecessarily our return to England. Thus situated, however, I began to feel as if I had no right to be at Calais! as if I could not pay my way!! How infinitely vexatious!—the first time I had ever been *on the Continent* (!)—with so many novel and interesting objects and feelings without and within—so much to observe—to see, hear, and think of; at CALAIS—old Calais, so fraught with historic recollections and associations to an Englishman, moreover, with only a few hours at his command, and to be thus crippled in the sinews of war—but, positively, there is my redoubtable *ναύκληρος*! Welcome, thou bluff Englishman, in this quaint strange land!

"Ah, Captain, how d'ye do again?" I exclaimed, approaching him, as he stepped out of a dusky café.

"Well, sir, what d'ye think of Calais? Rum town, an't it, sir?"

"Very—very! But—a—a—Captain," I added, lowering my voice,

do you know I've been down to the steamboat on purpose to see you; I'm very unpleasantly situated"—

"Eh, sir? what? In trouble already, sir? why, what's the matter, sir?"

"Simply this—I'm almost ashamed to tell you, Captain—but I was fool enough not to bring sufficient money with me." He burst out a-laughing.

"Lord, sir, is *that* all? Never you mind, sir; I'll take care of you, never fear it! I'll be — if a fellow-countryman shall get into trouble out of Old England for the want of a pound or two—what d'ye want, sir? I've plenty!"

I brought forward my budget in no time—would our Chancellor of the Exchequer were equally prompt, simple, and faithful!

"Oh, Lord, sir, you needn't fear, you'll have quite enough—how *can* you spend what you have betwixt this and eight o'clock to-morrow morning, unless, to be sure, you're a-going to live like a Lord, and buy jim-cracks and that sort of thing? It can't be, nohow. But hows'ever—whatever you're short of, I'll let you have—with pleasure! I'll be with you in the morning a quarter before eight—at Quilliacq's—and set you all smooth and straight, if you want it—depend on't, sir!"

"Thank you, Captain! I'll remember your kindness—that you shall find. Whatever you lend me you can be repaid within ten minutes of our landing at Dover. I have — Cottage, and you can go or send a man with me."

"Pshaw, sir, I an't afraid to trust a gentleman. Hillo, my hearty," addressing a man who approached, "how are you all?" and hastily taking leave of me, we went different ways. I felt "myself again." With a loud "hem," I looked every one I met in the face, and with a sort of an *air* scrutinised all the shops. I re-entered Quilliacq's with far more confidence than I had originally entered it. It was a large hotel with an immense number of windows, each having

heavy shutters, painted a faded green colour. It stood between two small and rather inferior streets, into both of which it had an entrance—but not such an entrance as such an hotel would have had in England. You would have thought yourself going by the back-door into a kind of wharf or warehouse-yard. On entering, you found yourself in a kind of square, each side of which consisted of the hotel offices.

Having taken a little "cogniac" and water, and a biscuit, we issued forth to explore the town. The Commissionaire, whom we met at the door, advised us to go first to the church; and he politely mystified us, in very broken English, with directions to go first to the right—then to the left—then again to the right, and so forth, till, lo!—*l'église!*

At length, however, we reached it. Its exterior has nothing worth notice, or unlike a similar structure in England. Men and women were busily scouring one side of the church; while, at the upper extremity, on plain rush-bottomed chairs, were a number of men and women—principally the latter, and of the inferior sort—kneeling, their hands with prayer-books resting on the backs of the chairs, their faces directed towards the altar and the shrines of particular saints—in silent prayer. A tall feeble old man, in a cocked hat and long threadbare blue greatcoat, over which was thrown a belt with a sword, and with a walking-stick, approached us soon after our entrance, and began, in a low tone, to point out to us the various objects—shrines, images, pictures, &c. Before the first shrine was a small triangular table, with a number of spikes, on which were stuck wax candles, of different sizes, burning—some burnt out—and which, I found, were offerings to the grim-looking saint before whom they were placed. God forbid, however, that I should feel disposed to turn any one's religious observances into ridicule, especially where one's curiosity had been so civilly and freely gratified. As we passed one quarter of the church, we saw a fat woman quitting

the confessional, the priest, tall and stately, presently following her, in canonicals. He passed us with a solemn air, and on reaching the front of the high altar, opposite which was placed a chair, he deliberately kneeled on it for a moment or two, looked earnestly at the figure of the Virgin, crossed himself, and withdrew.

We then bent our steps towards the Ramparts, and a very pleasant promenade they afforded. They are a kind of slope, containing three parallel walks of nearly a mile in length, each about three feet higher than the other, and separated by garden hedges, with numerous plots of flowers, and benches. They commanded an extensive view of the sea and surrounding country, which, however, was rather flat and uninteresting. After remaining there a short time, we returned to the hotel; and foreseeing that the time would hang rather heavily on our hands—as there is really scarcely anything at Calais to feed the curiosity of professed sight-seers—we ordered dinner to be ready at four, instead of five o'clock. This done, we walked to the harbour, where we passed garrulous groups of fishwomen, all in spruce white caps, and with long heavy gold, or gold-looking, earrings, and presently beheld a knot of French sailors quarrelling with those on board of a Dutch vessel. Such a strange nasal and guttural hubbub! We then walked along the pier, which is of wood, and very narrow. As we sauntered along it, enjoying the brisk sea-breeze, we were rather surprised to see about twenty boys and men bathing, and swimming to and fro, but of course wearing drawers, directly in sight of every one that passed along the pier. On reaching the extremity of it, we found about a dozen people sitting round it. Soon after I had taken a vacant place, a stupendous German—as he proved to be—well dressed, opened his closed eyes upon me with a drowsy air, and then slightly leaning against me (!) with a sort of stupid nonchalance, crossed his hands over his corpulent paunch, and presently began to snore aloud! I look-

ed at my wife in wonder. A young and elegant French girl, who had watched the performance of the German, looked at us, and burst out laughing, in which I heartily joined, and shifted my position. The man-mountain, meantime, seemed surprised that his support was gone, but soon closed his sluggish eyes again, and fell a-snoring. Immediately opposite sat an elderly gentleman, evidently suffering from gout—his feet in large list shoes—his countenance wearing a languid and not over-good-natured expression. Before he had opened his lips, I felt certain that he was a fellow-countryman; and I was not mistaken, for he presently exclaimed to a gentleman near him,—“Well! the Whigs have caught it prettily in the counties—eh? Ah! you don’t half like it, I see. Ha, ha, ha!” with a grim leer. He soon satisfied me that he was an arrant Tory; and being myself somewhat that way inclined, I contrived to get into conversation with him, and told him all the latest election news, at which he was greatly delighted. We agreed in every topic we touched upon. Before I left, he had got into a great debate with a fierce, raffish-looking semi-militaire—a Frenchman—concerning the relative advantages of republicanism and monarchy, which latter the Frenchman, with an excited air, pronounced to be utterly unsuited for the genius of the French, as I gathered from the Englishman’s answer, and from my wife, who was, as usual, my interpreter. On returning to our hotel, just as we entered the street in which it was, my wife’s foot unfortunately dislodged a stone, and her stocking was instantly covered with muddy water. Here was a dilemma! These were the only stockings she had brought with her; and, low as were our funds, it was evidently necessary that I should get her another pair. I was forthwith despatched upon that errand. After peering about for a suitable shop, I found one in the market square. A prettyish girl, about eighteen or twenty, sat behind the counter sewing. Imagine my awkwardness, for I did not know the French for stocking.

“Mademoiselle,” I commenced, calmly enough,—“S’il vous plait—je besoin—humph!—a pair of—of—voilà!” poking with my stick at a pair of stockings that hung in the window. She took them down, and said something that I could not understand.

“Oui—oui,” I replied, at a venture,—“petite! pour une dame, ma femme!”

“Je vous remerciez, Monsieur, je comprends bien;” and she forthwith opened several packets containing ladies’ stockings, silk, cotton, plain, and worked.

“How much?” I inquired, pointing at once to my purse, and a pair of silk stockings.

“Neuf francs, Monsieur!” I could only grin, for I did not know what she said. Spreading some silver on the counter, I motioned her to count out the requisite sum—to my alarm, seven shillings and sixpence! I shook my head. She smiled good-naturedly, and got me a pair of common cotton stockings, counting out, at the same time, two shillings. But that was as much under the mark. I foresaw that my wife would never have put on such coarse things. Again I shook my head and put aside the articles.

“Ah!” she exclaimed, good-naturedly, “Vous êtes Anglais? Sare, I speak non ver bad Anglais. Vil you avez, Monsieur, some scoshtrid?”

“Eh, ma fille! *ecoshtid*, what is that?”—

“Scoshtrid, voilà!” unfolding another packet.

“Ah, bien!” I sighed, adding, in despair, “Ma fille, je suis à l’hôtel Quilliacq. Will you come avec moi, and la dame will choose pour herself?”

“S’il vous plait, Monsieur,” she replied, after a little hesitation; and beckoning to an old woman to come from within and take her place, she threw a very shabby old green cloak over her shoulders, put her packages of stockings under her arm, and whether I would or not, though I once or twice quickened my pace to throw her into the rear, walked cheek-by-jowl with me all the way to my hotel, endeavouring, at the same time, to converse with me. She skipped nimbly

up-stairs after me, and in a twinkling had her merchandises spread before my wife, who soon selected a pair of the mysterious "*scoshtrid*,"—i. e., Scotch-thread stockings,—and so repaired her disaster. As she was tired, she lay down on the sofa, and I went out again to look about me. I sauntered through every street in Calais. What a blessing is speech to man? How often did I long to chat with the good-natured-looking people I met; but, alas! *vox faucibus hæsit*, indeed. Watching my opportunity when no observers were near, I stopped at an open window, where a tidy, cheerful old woman was sitting selling fruit, and meditated attempting to enter into something like conversation with her. But 'twas in vain, and with a silly smile I stole off ridiculously. Almost every third or fourth shop bore the inscription, "*M. D. Epicerie*;" and after great consideration, I satisfied myself that it meant dealer (*Marchand*) in groceries,—a title, however, which was frequently not in the least warranted by the appearance or contents of the shop. The better translation of the latter word would be, "*Things in general*." But of all the extraordinary sounds it has ever been my fate to hear from men or animals, save me from the cry of the French fishwomen! While I was quietly endeavouring to comprehend the meaning of some placards stuck on the wall, I almost started off my feet, for there burst upon me, from a woman close at my elbow, in a blue dress, with cap, earrings, and a great basket on her shoulders, such a shrill scream as I fancied could have issued only from a mad macaw. Positively, I followed the eloquent speaker down a couple of streets, to note her astounding cries. Addison, in one of his *Spectators*, has some humorous observations on some English street-cries; but what I heard must have utterly stunned that sensitive and delicate personage!

After strolling about for some quarter of an hour longer, I observed, opposite a house in the Rue —, a little crowd. I went up and beheld a dozen people, chiefly old women, sitting demurely round a large dresser, or table,

by the open window of a house, surrounded by about fifty or sixty bystanders. A man sat at the head of it, with a book open before him and pen and ink, exclaiming, in a quiet low tone, what I presently made out to be, "*Trois cents, quatre cents, cinq cents, sept cents, franc, franc et demi*," &c. Evidently an auction was going on. Wondering whether it were the sale of a poor tenant's effects for rent, or what it might be,—"S'il vous plait," said I to a decent man beside me, "*Qu'est ce que c'est*?" he replied, briskly and rapidly. I bowed when he had done, as if I had understood him, but I had not caught one intelligible word. Presently I bethought myself of a word that might produce a short answer. I again bespoke him,—"*Pourquoi, Monsieur*?" he answered rather sharply, doubtless surprised that I could ask such a question after hearing what he had told me, but this time I caught the words, "*Une femme morte*!" At length a dispute arose about a crazy kettle that had been put up, and such a hubbub among the women! in the midst of which I walked off, and turning the corner of the street, found myself unexpectedly on the Ramparts again. It was now about half-past three o'clock, the sun shining clearly, and I began to feel rather jaded, and hungry to boot. I determined to walk homeward by the way of the Ramparts. At a little distance I beheld a tall, dark figure slowly approaching me, dressed in clerical costume, a large three-cornered hat, black crape bands with white borders, a long black coat reaching down almost to the ankles, black stockings, and great buckles on the shoes. His hands were joined behind his back, and he appeared in meditation. He was tall and well-proportioned, about the middle age, with a sallow, melancholy, and rather intellectual countenance. He eyed me steadily, but not offensively, in passing; and I recognised in him the priest whom I had seen quitting the confessional that morning at the church. We passed and repassed one another several times in that long

shady walk. Once we both stopped within a few yards of one another, to watch the motions of a party of soldiers, who at a few hundred yards' distance were practising firing with muskets. Just then I had half made up my mind to attempt entering into conversation with him; for I thought it not impossible that he might speak a little English, or that, at all events, we might contrive to make one another understood in Latin. All I had heard and read of foreign ecclesiastics came across my mind—he might be a bigot, and hate a heretic like me; so, on the whole—While thus occupied, a merry voice broke in upon me suddenly, "Pa—pa! My Pa—pa! dear Papa!" It was my little son, who at the same time clasped his arms round my leg, having with his nurse approached me unexpectedly from the adjoining walk. Never were his little prattle and pranks so dear and welcome to me as at that moment, when I had for one or two hours felt myself to be a kind of *solitaire*, cut off from my wonted intercourse with my fellow-men, between whom and me there was no communion of speech, lost in a reverie of novel and chilling thoughts and speculations. After despatching him, I walked on towards the further end of the Ramparts, and seated myself on a bench which commanded a very pretty view of the town of Calais. As I gazed at it, my thoughts insensibly travelled to those passages in English history which made such memorable mention of it. Nearly five hundred years ago had our victorious Edward III. made Calais his own! Flushed with the glories of Cressy, methought I saw him watching the progress, and considering the effect of his formidable lines of circumvallation, round which his galled and baffled rival Philip hovered in vain. Then, lo! a dismal sight—the six burgesses, death-doomed, bearing their halters, dressed in their shrouds, and bringing the keys of the city to its furious conqueror; then his tender and merciful queen, melting his cruel purpose concerning them. I was deep in these

recollections, my arms folded, when the church clock near me struck four; and looking suddenly up, my eye lit upon the dark figure of the priest, who, from above the hedge of the adjoining walk, was standing and gazing at me. On observing my motion, he slowly turned away and walked on, I also stepping down into the town, and hurrying to my hotel. I could not help noticing, as I passed along, the chime of the Exchange bells, and gradually recognised the air of an old French *waltz*—

"Depuis long temps j'ai jamais Annete."

But dinner! dinner! how hungry I was! How glad to see the fitting preparations completed, and in cleanly and comfortable style! My toilet did not occupy me long, and down we sat, ready to do ample justice to Monsieur's purveyance. Expect not, however, my friend, any curious criticisms on the art gastronomic, such as lately astonished the quiet readers of the "Quarterly." I have neither the requisite knowledge nor experience, and am mindful of an old friend's caution—

"Nec sibi cenarum quivis temere arroget artem,

Non prius exactâ tenui ratione saporum!"*

I have as keen a relish as any one of her Majesty's subjects for good things, but care little about the art of producing them; that I leave in better hands. But to return. The vin ordinaire was soon ordered off the table—it was filthy, and set our teeth on edge. Its place was supplied by Champagne only. The fish and fricandeau were very fair—both, however, somewhat too acrid, the latter being utterly smothered in sorrel sauce. As for the fowl—*oh, Lord, that fowl!* it grieved me to behold it! It must have died of the pip! Such skinny legs and wings—such a meagre trunk—we dissevered and mangled it, only in charity to our successors; a thing, in similar circumstances, that I do invariably. We had, however, an omélette in reserve, and it was excellent. A little Gruyère, and the ordinary et

* *Hor. Sat. Lib. II. Sat. iv.*

ceteras, especially a thimbleful of eau de vie de Dantzic, wound up our brief and modest repast. I had some cause to feel elated, for my wife had left me all the Champagne to discuss, except about two glasses. For a while I felt less lonely than I had been during the day.

Dinner done, I sate at the open window, to see what was going on in the street. Presently came the sound of a horn, accompanied by the rattling of heavy wheels, and lo! the Paris Diligence!—a great lumbering vehicle, drawn by three horses and two horses abreast, crammed with passengers and luggage—there was evidently an Englishman peeping out of the banquette! How vastly inferior the whole affair looked to *our* light, compact, and even graceful public vehicles! A few minutes after this the waiter came in and told us that the voiture was at our service, if we were disposed to take a drive through the suburbs of Calais. This was an excellent idea; in a trice my wife, the child, and servant got into the voiture,—a capacious, old-fashioned-looking glass coach, drawn by two excellent horses. Understanding from the waiter that the driver could speak English, I got on the box beside him. Passing beneath the covered gates, and over the drawbridges, somewhat reminded me of Portsmouth and Chatham. A good many soldiers were sauntering about, and the townsfolk were abroad in considerable force, enjoying the delightful cool of the evening.

"Which way are you going?" said I to the driver, as we approached a part of the road that branched off into two.

"Non, Monsieur!" he replied with a stupid air, quietly smacking his well-fed horses.

"Why—ne parlez-vous pas Anglais?" I inquired, rather sharply.

"Non, Monsieur," he grunted.

"The deuce take the fellow!"

"Oui, oui, Monsieur," he replied, with a matter-of-fact air.

I burst out a-laughing. He modestly smiled.

I felt so annoyed at this that I was almost resolved to get inside; still, however, the air was pleasant, and I could see infinitely more than if I were within, so I endeavoured to reconcile myself to my hard fate. The driver now and then spoke to me in French—I daresay he considered me queer and taciturn enough, for I seldom answered him, and could not make him understand distinctly that I spoke French no more than he spoke English. Our road was open and cheerful—a very broad highway, with houses and shops on each side—something resembling Ratcliffe high-road, or Whitechapel road, but not so crowded, or with such mean-looking houses. About a mile and a-half from Calais, on the left-hand side, stood a church. The driver pointed to it, and said, in his usual dull phlegmatic manner, as I understood him—

"Ne verrez-vous pas l'église, Monsieur?"

"Oui," I answered; and presently our voiture drew up at the gate of the churchyard, where we all got out. Heavens, what a marvellous appearance had that churchyard on first entering it! It was crammed with large wooden crosses, painted black and white, with inscriptions on them—so totally different in aspect and character from *our* white grave-stones—looking, in the fading daylight, like a crowd of ghosts all with outstretched arms! They struck a kind of awe into my soul as I passed through them! We entered the church unattended by any one. I found about thirty or forty women, chiefly elderly and of humble station, kneeling on chairs, in silent prayer—nevertheless curiously eyeing us as we stepped past them, looking at the same mournfully foolish objects, as I considered them, that had presented themselves to me at the Calais church. One thing pleased me—the perfect equality in point of place and position—whichever came to the church must sit in one place, and on the same description of seat, a rush-bottomed chair: so different from *our* enclosed luxurious pews, and free seats. Altogether, there was some-

thing very striking in the scene, in which we were placed; the strange unearthly aspect of the churchyard; not a living figure visible; not a sound audible; the mellow declining sunlight; the calm summer's evening; the humble-looking antique church; the simplicity and silence within; the motionless figures of the devotees; two large tapers, recently lighted, burning faintly before the dusky altarpiece; one or two grotesque-looking shrines; I watched all this with deep interest and presently quitted it with a subdued and lonely feeling. We re-entered our vehicle, and drove off after a little colloquy between me and the driver, in which we in vain endeavoured to understand one another's wishes and meaning. Observing the country to look very pleasant towards the right, I pointed in that direction, and he presently turned down a by-road, on the right; and drove beside a narrow but rapid stream, on the borders of which stood, as I thought, a paper-mill. We met a kind of Irish jaunting-car, a queer, but very neat turn-out; and the driver and his groom, who sat back to back, were palpably fellow-countrymen of mine—that is to say, fellow-Britons—for they were evidently Irish, and I Welsh! By-and-by the door of a very small, mean-looking cottage opened, and there issued forth a middle-aged woman, very neatly dressed in cap and shawl, accompanied by apparently her daughter, a girl about six years old, dressed as elegantly as a young lady of some station in England, attired for a ball! They were evidently going to a little ball, or evening party. Indeed, a little further on, from several small houses on the right, issued the sound of music, and through the open doors I saw the figures of young men and women dancing. Soon, however, we left these houses behind, and found ourselves fairly in the country, only a distant farm-house visible here and there, with a wind-mill or two; labourers and farmers “homeward wending their weary way,” with sickles, rakes, &c.; and laden teams jogging slowly along towards the town. Our road lay be-

tween a kind of heath, bordered by corn-fields, but the whole surrounding scenery seemed rather flat and cheerless. There was nothing here to remind us that we were not in England. As it was getting chilly, and the shades of evening descending fast upon us, and my little boy had had a long and wearisome day of it, I directed the driver to return, and by about half-past seven we were safely housed again at our hotel. I gave the man a franc, with which he seemed quite satisfied, and we were charged in the bill only three francs for the voiture.

It was now getting rather dusky, and my wife was tired with her day's peregrinations. My enlightened curiosity, however, was not yet sated, and I had only three old stale numbers of “Galignani's Messenger” wherewith to occupy the time; so after our *café au lait*, once more I sallied forth alone to view the humours of the town. I bent my steps towards the harbour. About twenty or thirty soldiers of the line were clustered about the great gate. They seemed a swarthy, stunted set of fellows, with nothing like the air or *physique* of our own soldiers; doubtless, however, able to do a little stroke of business when occasion might require it. On reaching the fish-market place, there seemed to have recently arrived a cargo of oysters; and I joined a group of fishwomen, who were surrounding four small heaps of large coarse-looking oysters, which were evidently being sold by auction, the auctioneer being a grey-headed fishwoman, who, with her arms akimbo, with a serious matter-of-fact air, and in a quiet authoritative tone, scarce above a whisper, was saying, “deux francs—trois franc et demi—quatre francs—cinq—six—sept francs,” &c., &c. A buxom good-looking young fishwoman just before me, with huge earrings, and very neatly dressed, was declared to be the purchaser, and the little cluster of bystanders dispersed. She instantly whipped out a large claspknife,—took up an oyster in her hand, struck it heavily with the back of her knife,—the point of which she then forced into the fracture,—and

forthwith opened the oyster, to the manifest peril, as I fancied, of her left hand; gulped down the astonished native, and then, in like manner, opened several more, which she distributed at a trifling price to one or two of the people standing by. With a good-humoured smile she offered me one of the finest that came to hand. I motioned, however, that I had no money.

"Sacré!" she exclaimed, proudly, still extending the open oyster to me, which it would have sickened me to put to my lips, for "the full stomach loathes a feast"—"*Il faut donner au gentilhomme!*" But I excused myself, notwithstanding, as civilly as I knew how, and she desisted, whispering to a companion something like—"Gentement! c'est un Anglais!"

I now retraced my steps towards the town, and sauntered slowly about, peering into the various shops, in which lights were beginning to make their appearance. In a bookseller's window I beheld—shall I be foolish enough to mention it?—a French edition of a certain little work of mine own, and the first volume of Mr Hallam's late work on the literature of the sixteenth and seventeenth centuries—selling each of them for four or five francs, if I recollect rightly. Seeing the owner of the shop, as I fancied, standing at the door, a civil-looking well-dressed young man, I ventured, in a sneaking kind of way, to point him to my book, and say "*Je vous prie, hem! Do you sell—a—a—plusieurs—de—de—ce livre?*"

"Oui—assez bien—*passablement!*!"

It served me right. He then took up Mr Hallam's book, and showing it to me addressed me very volubly, doubtless eulogistically, concerning that able and very learned performance; but scarce a word of his panegyric could I understand. What an odd mode, by the way, they have of suddenly raising the pitch of their voice at the end of a clause or sentence, running the word off into a kind of—"euh!" And then they talk with such rapidity! But to return. Wishing to appear capable of saying something that should appear fine, I

answered a long harangue of his by gravely observing, in a very calm and confident tone, "*Barbaracelarent Darii ferio que prioris!!!*"

"Précisément, Monsieur!" he replied blandly; adding, however, after a moment's pause—"Mais—je ne parle pas l'Italien!"

"Bon soir!" we both exclaimed, with a bow, and separated. A little way on I beheld a dog, apparently of the terrier-breed; and being something of a naturalist, felt a great desire to ascertain whether it would bark with a French accent or not. For this purpose I followed it in its little peregrinations, and presently had the good fortune to hear it utter a short sharp bark precisely after the manner of an English dog. This I carefully noted, and will maintain against all gainsayers. I likewise saw a cat; but though I tried to make it mew, I did not succeed. I now sauntered about the market-place, a very large open square, where little parties of decent townsfolk were promenading to and fro. A good-looking middle-aged man, dressed in a blue surtout, and white trousers, suddenly stopped near me, and placing on the ground a small box he had carried under his arm, opened it, and displayed small packages apparently of corn-plaster. One of them he took in his hand; then he removed his hat, which he placed on the ground beside him—displaying a bald head and excellent forehead—placed himself in the attitude of a public speaker (!), and, addressing me and a little boy, began—"Messieurs" (!!)—the rest I could not understand. He went on with great energy and fluency, evidently commenting on the virtues of the article he held in his hand. In about three minutes' time he had collected an attentive little auditory of about thirty or forty people, whom he harangued with infinite emphasis and gesticulation for about ten minutes, without, however, having persuaded any one to purchase anything. So he presently, with a graceful air, but some slight chagrin in his features, shut up his box, replaced his hat on his head,

politely bowed in doing so—and his late hearers instantly dispersed.

I was standing near the Place d'Armes, where several soldiers were sauntering about. Six drums were lying on the ground; and as the clock struck eight, they were instantly seized and buckled in front of six drummers, who stood before a drum-major. He waved his *canne* formally, and they began to beat the drum,—such an admirable *roll* I never heard. I grieve to be forced to own that I never heard such drumming in England—such precision, and even *expression*—the drums seemed to speak!—and all done with the utmost ease and *sang-froid*. They remained thus engaged for about five minutes—I was infinitely struck with the startling effect that such a stern martial alarum was calculated to produce in the peaceful town at dusk—and then the drum-major gave the word of command—they faced about, and, he leading the way, they marched off, still beating the *retraite*,* I, and a straggling crowd of children, following in their rear. The hour—the place—the deepening shades of evening—the feelings and associations excited by the military music—I a foreigner—these considerations took such a hold on my fancy, that I followed the music down two streets, and then stopped to listen to the sound, growing gradually fainter (they perambulate the town thus every evening), till in the distance it was only an indistinct “rap, tap,—tap, tap, tap; ra—ra—rap, rap—tap, tap, tap!” and I bent my steps towards the hotel, for there was nothing else to be seen—no theatre or place of public amusement, and I was getting rather fatigued. I found a couple of tall wax-lights standing guard over my wife, who was asleep on the sofa; so I sate myself down in an ample arm-chair, thinking over what I had seen during the day. I had not been disappointed. What I had seen, and heard, and felt, was quite different

* The *Retreat*—to summon all the soldiers that may be about the town to their barracks.

from anything I had *before* seen, or heard, or felt. I had witnessed French manners in a complete French town. The inhabitants seemed generally gay and active, the place cleanly and orderly; I felt a difficulty in pitching on any town in England similarly situated, and of similar pretensions. Still I could not have spent a second day at Calais: I felt that I had exhausted it. A little noise I made in moving my chair at length awoke my wife from her nap; and she prudently suggested that as we should have but little time to spare in the morning, having to start at half-past seven, we should settle with M. Quilliacq, overnight. I ordered the bill, therefore, to be brought, and it was presented to us in a few minutes' time. The sight of it not a little comforted us. Here it is:—

AOÛT 14.

	fr.	ct.
Diner (2),	8	0
1 Champagne Sillery,	8	0
$\frac{3}{4}$ Vin (ordinaire),	1	0
Eau de vie de Dantzic,	1	0
Café (1),	2	50
Soda, Sucre, Cognac,	2	50
Bougies,	2	0
Logement,	10	50
Promenade en Voiture,	8	0

Domestique.†

Diner, and $\frac{1}{2}$ de vin,	2	25
Thé,	1	0
	40	75

Seven francs we gave to the servants; and having taken a glass of brandy-and-water (whether my wife took any of it, in a wine glass, is a matter entirely between her and me, and the reader has no concern with it), and talked over a few of our little adventures, we betook ourselves to our bedroom about ten o'clock, passing through that in which our little son, with his dear ruddy cheeks and curly hair, and his arms fancifully disposed over the pillow, was lying, the image of blessed innocence, his

† Madame Q. took quite a fancy to my little boy; which must have been the only reason why the following item—

“Dîner de l'enfant, 1 fr. 50,” was scored out.

thoughts, perhaps — who can tell whether children dream? Dear little boy, thought I, as I bent over him for the first time in a foreign land—my first-born, and only son—Pshaw! perhaps the reader is not a parent,—but *you are*, my friend. We had a double-bedded room, so we took a bed a-piece, for they were very small. I lay awake for several hours. How tired I was of the eternal “*Depuis long temps*” chimes of the neighbouring Exchange clock! Towards two o'clock we both began to get drowsy; when a dog, as if determined to put an end to my scepticism for ever, on the subject of canine pronunciation, commenced such a continued barking and howling, as dispelled sleep indefinitely!

“E——!” I exclaimed, in a low tone, to my wife, “are you asleep?”

“Asleep? How can you ask me! when that abominable dog——”

[Bow, wow! wow! wow! who—o—o—o! Who—o—o! Bow, wow, wow——wow!]

“Perhaps it's an English dog that is *bothered* here, and cannot agree with his French companions?”

“Don't talk such nonsense! I'm really too vexed to laugh. So tired as one is with a long day's”—— However, the noise ceased for a time. I began to forget where I was; then my half-opened eye would settle for a moment drowsily on the alabaster vases and mirror, dim glistening in the rush-light lustre over the mantel-piece; a delicious feeling of fast-retreating consciousness came over me—* * * when such a long lamentable howl burst upon my startled ear, as satisfied me that the devil owed me some particular grudge.

“Good heaven! what is that dreadful sound?” exclaimed my wife, starting up. “Where are we? Oh——” I also got up, almost in a cold sweat. “*Depuis long temps—J'aimais Annette,*” said, or rather sung the Exchange bells—and out went, at that particular juncture, our rush-light. * * * Black—dark—pitch-dark—silent!—“*not a mouse stirring!*” * * * I recollect nothing more, till my wife came to rouse me, exclaiming, “Pray,

do you know that it has struck seven o'clock, and we must be on board by eight?”

Having forgotten to bring with me a razor, I felt it necessary “to seek a shaver;” and quitting the hotel, I found, in the adjoining street, the place I wanted—a small neat barber's shop, the shutters of which had just been removed. “*S'il vous plait—rasez-moi!*” I exclaimed to a genteel young man, who was standing within, twirling about and combing his hair. He proved to be the owner of the premises; and seemed about twenty-five, very good-looking, but rather effeminate, with his hair plastered down into a large curl over each ear; he seemed to have neither beard nor whiskers; and rings on each little finger, and in his ears—why had he none in his nose? You would have laughed to see me surrender myself into his hands, having in vain endeavoured to make him understand how precious my time was! Before he began, he put a little *eau de Cologne* over his fingers, which were soft and delicate; and when he had finished, he brought a basin of water, into which he freely poured some *eau de Cologne*, and fragrantly cleansed my cheeks and chin. Short as was my time, a sudden whim seized me of having my hair cut, which was not at all necessary, by the way! All I could signify of my wishes, was, by running my hand, scissor-like, through my hair. Before commencing he made me an earnest speech, which I could not understand; but at length I ascertained that he was asking me whether I would have my hair cut in French or English fashion. I pointed to his own hair, and shook my head, exclaiming, “à l'Anglaise—*Anglaise*”——

“Oui, oui, oui! Oui, Monsieur; je comprends bien!” he replied, and began. As we could not talk to one another, I fell into a brown study by the time that he had done—and then, how he had twisted and plastered my poor hair! I could not help laughter, as I looked at myself in a glass which he held for me, and observed the confi-

dent air with which he was regarding his handiwork. Not wishing to hurt his feelings by altering the entire disposition of my hair, I clapped my hat on, gave him a shilling, with which he seemed abundantly satisfied, sneaked across the street, and, once got into my room, soon brought my hair back into something like its usual disposition. My long absence had, I found, somewhat alarmed my wife, who fancied that I had got into "some queer adventure or other," and lost myself, or "made no note of time." Having fastened up the carpet-bag, I gave it to the waiter, who followed us down to the quay. On reaching the steamboat, the Commissionaire of M. Quilliacq presented himself, and with a polite air said, "Monsieur ———, you shall give me, if you plizz, four shilling, for your expense." Taking it for granted that his demand was one of course, I immediately paid it; and, wishing us a pleasant passage, he withdrew, and we got on board. The morning was cool and pleasant; but there was evidently a brisk breeze stirring, of which we should know more when we got out to sea, and of which the people on board proposed taking advantage, as the sails were all ready to be hauled up at a moment's notice. There were about twenty passengers, all respectable people, with the exception of some three or four old French women, who looked arrant smugglers! As we passed up the harbour, and got sight of the sea, I saw how matters were likely to be—the water was evidently very rough, and the wind blowing rather hard. As we rounded the jetty, up went the sails, and presently, whew!—pitch—pitch—heave—roll—up and down, lurch went the vessel, with that thrilling, quivering accompaniment always present to a steamboat.

In less than a minute four ladies had laid themselves down upon the deck in all the direful agonies of seasickness; which in about five minutes' time attacked and overthrew my wife, the child, and his attendant; as for me, I have passed too frequently between Leith and London, and been

too much on the water at the sea-side to suffer easily; and I escaped—to observe my fellow-passengers! There was a tall pale gentleman, apparently about thirty-five, very philosophical, with spectacles on, and who had caused it to be understood that he had found out a method of preventing seasickness. Well, amid all the horrid pitching, and rolling, and quivering of the vessel, he sat, leaning forward, resting his face on his hands, his fingers compressing his eyes—in this posture he continued motionless for upwards of an hour, during which time the vessel pitched about much more than I could have thought a steamboat could—so much so, that it required some care, in moving about, to prevent being jerked off one's feet, and falling overboard. But to return to the philosopher and his experiment—yes, there he continued motionless—evidently in a desperate humour, adhering to his system. Ah me! that dismal lurch—alas, my philosopher, are you the first whose theory has failed? * * *

Near where I generally stood sat a stout French gentleman, of middle age,—wearing a fur travelling-cap, with a gold band round it, and wrapped in a roquelaire, smoking a cigar. He could speak a little English—and I had asked him, soon after starting, whether he expected to be sick.

"Non, sare, I will not be *seek*. De sea and I, sare, are ver better friends than for fall out with each oter—I am ver well!" and he puffed his cigar vigorously.

"Ah, but do you think, sir, you will *keep* well in this shocking motion?"

"I believe, sare!" he replied, somewhat drily—and I left him;—but I kept a sharp eye on him!—For an hour or so he held up bravely—latterly, however, looking somewhat keenly at me as I passed and repassed him—he fancied I was maliciously watching! At length he laid aside his cigar and folded his arms; then I fancied he had lost a little colour;—by-and-by a queerish expression came into his eye—it was languid and unsteady.

"That *was* a plunge, wa'n't it, sir?" said the Captain to him, as we were almost both of us pitched several feet forward by the shock. The Frenchman attempted no reply, but suddenly rose from his seat—exclaimed faintly, "Sacre!—oh, *mi* Got!" rushed, with the Captain's assistance, to the lee-side of the vessel with a desperate air. * * *

There was a lively genteel-looking lad, about sixteen years of age, who was as merry as a bird for about half an hour, here, there, and everywhere—blithely whistling and humming, and amusing his mother with his antics. She was a very agreeable person, and we chatted a good deal together. Neither of us were sick at all, or approaching to it. But her son—"oh, how he liked the motion! He hated smooth sailing—*this* was exactly the sort of thing he liked. It was *such* fun!—Mother, only look—see what a height we are out of the water, then down again—how I wish Tom were here!"

"Don't be too confident—you may be a sufferer yet," said his mother, with a smile.

"I? never trouble yourself! I like it, of all things—it's as good as any swing!" Very probably; but about ten minutes afterwards, happening to cast my eye in the direction of the larboard-side of the vessel, which was crowded with invalids, I saw a lad's face directed towards us for a moment, pale as a sheet—then his back suddenly turned. I neither saw nor heard any more of him.

My wife and child suffered very severely. I began to be seriously alarmed for the former—but happily all ultimately passed off well. For my part, the passage home was de-

lightful—marred a little, it is true, by the painful spectacles of desperate indisposition around me. I hate steam-boats, both great and small; I am always nervous when on board them—and involuntarily shudder at the idea of an explosion. This is weak—but I cannot help it. For my taste, give me a taught vessel, wind-impelled by bellying canvass. See her, glorious creature—

"Forth to the breeze she unbosoms her sail,
And her pennon streams onward like Hope
in the gale!"

bounding bravely over the heaving and roaring waters—however they may fashion themselves!—Instead of a black smoky fabric, obstinately grunt—grunt—grunt—grunting with hideous noises, steam and smoke—the old Leith smacks for ever!—

We entered Dover harbour about twelve o'clock, the wind still blowing freshly, but the sun shining brightly. A host of inquisitive people peered down at us from the pier-head as we passed. We looked, with figures still prostrate on the deck, something like a ship just coming out of action!—Mr Theodore Hook has a smart sketch of such a scene, in his "Jack Brag." After paying the fare, and one or two minor et ceteras, I found that I had not one farthing left in my purse. I spent the rest of the day in meditating upon French scenes, manners, and character, and digesting the results of my profound and extensive Continental observation. This letter gives you but a glimpse of them: only wait till my great work on France, literary, social, political, and religious, shall have made its appearance; and till then, believe me, affectionately yours,
W.

PEGSWORTH:

A PRESS-ROOM SKETCH.*

LONDON, 10th March 1837.

DEAR SIR CHRISTOPHER,

In giving you a short, and I hope interesting, account of a scene of peculiar gloom and terror, which I have just returned from witnessing—the preparations within the prison for the execution of Pegsworth the murderer, and his execution,—I do not think it necessary to vindicate or account for the curiosity which led me to witness so sad a sight. I must acknowledge that of several persons who happened to know that I was going, none evinced any desire to accompany me, even had it been in their power. Some expressed astonishment at my determination, and declared that no earthly consideration should induce them to follow my example. Others pretty significantly hinted at my want of feeling, or remarked upon the overmastering effect of curiosity upon even the liveliest sensibilities. When, however, I rejoined these persons after having witnessed the spectacle I am going to describe, there was not one of them but besought with eagerness, and listened with breathless interest to the details of a scene which they had so murmured at my qualifying myself to describe. This communication to you is the result of their suggestions and entreaties. I shall therefore tell you, shortly and simply, all I saw; I shall, in a manner, take you with me; premising only that I have no desire to

prolong the remembrance of the blood-stained wretch whose end I witnessed, nor to lay myself open to the charge of exaggeration or mawkish sentimentality.

Pegsworth, you will remember, about two months ago, sought an interview with one Ready, a tailor, whom he owed some trifling sum, for which he had been summoned to a Court of Requests by Ready. While standing in quiet conversation and remonstrance with Ready, who was an invalid, in the parlour of the latter, Pegsworth calmly drew a long sharp knife from his pocket, and stabbed him to the heart, so that he almost instantly expired. Both were members of the same Dissenting chapel, and had ever passed for quiet reputable people; and both had wives and families. The murderer immediately surrendered himself to the officers of justice, confessing what he had done: and when arraigned at the Old Bailey, pleaded guilty—on which he was immediately sentenced to death; and his body, according to the recent statute, directed to be buried within the precincts of the prison. When this part of his sentence was pronounced, and then only, he shuddered. The day of execution was fixed for Tuesday the 7th instant, and on the Monday preceding, I suddenly formed the determination of endeavouring to procure admission into the interior of the prison, for the purpose of witnessing the per-

* *Blackwood's Magazine*, April 1837.

son and demeanour of the murderer, and the solemn preparations for his execution. I went straight to one of the under-sheriffs; who, on seeing my card, and hearing my request, after some little demur, politely acceded to my wishes; and writing his name on my card, desired me to present it the next morning at half-past seven o'clock at the door of the room in which we were then standing, when I should be admitted, and accompany him to the scene of execution, and witness the whole process.

Having passed a wretched night, disturbed by all manner of wild and dismal dreams, I rose a little after six o'clock. Several times, while dressing, I half determined to abandon my design, and get into bed again; but I persevered, and about seven o'clock was in the upper part of Holborn, down which was pouring a constant stream of men and women, of the lowest description, towards the spot whither I was bent. I felt then somewhat ashamed of my company and errand. Judging from the indifferent manner, the jocular volubility of these people, you would have thought them going to see a dog-fight rather than the execution of a murderer! As we approached Snow-hill, which leads directly up to Newgate, all the avenues were seen crowded with the same description of people as had accompanied me down Holborn. Passing along Farringdon Street, I approached the Old Bailey by Ludgate Hill, and so escaping the crowd, even already very large, I slipped into the side door of the court-house, and was presently ushered into the room into which I had been shown the preceding afternoon. Three or four gentlemen, one of whom was a foreigner, I was informed, of some distinction, were sitting and standing round a cheerfully-crackling fire, and had evidently come on the same errand as I had. I sat down in perturbed silence, wondering at myself for entering upon such a gloomy expedition. While the foreigner—a Spaniard, I thought—was describing, with somewhat excited

gestures, the mode of execution adopted in his country, the door opened, and the two sheriffs and under-sheriffs entered, attired in their official costume, wearing weepers of white crape. The sheriffs had never before, I understood, witnessed an execution; and they seemed not entirely free from indications of nervousness and apprehension of the dreadful duty imposed upon them. After a few moments' pause, they moved towards the interior of the prison, and we, whose number had increased to about twelve or fifteen, an eager but silent little throng, were directed to follow. After going through two or three long and narrow passages, we were stopped by a huge iron-bound door, on the other side of which, peering at us through the bars, was Mr Cope, the governor of the prison. The sheriffs and under-sheriffs passed on immediately, and the door was then closed upon us, who would have followed them. We began to fear disappointment, and that, for some reason or another, the authorities had suddenly determined upon refusing us access to the press-room, possibly on account of our suddenly augmented number. After waiting, however, patiently for a minute or two, I and another, showing our counter-signed cards, were permitted to pass, as were the rest of the party soon afterwards. A turnkey conducted me and my companion along another narrow passage, the floor of which was covered with saw-dust. As we followed our grim guide along the passage, which seemed to run parallel with the front of the prison, an open door gave us a momentary glimpse of the vast crowd without, whose confused hubbub, suddenly and but for an instant audible, enhanced the portentous silence that reigned within the prison. After standing for a few moments in the passage, our guide quitted us, but soon returned, and requested us to follow him silently into the room in which the criminal was shortly to undergo the fearful preparations for execution. I obeyed, with a beating heart.

We had to pass through a room, lit with a lamp, if I recollect rightly, where a man was opening a door, having in his hand the sacramental cup—the last ordinances of religion either having been just completed, or commencing. "Gentlemen," said the governor, dressed in black, who here rejoined us, and ushered us into the press-room, "you will wait here, and be as quiet as possible, till the prisoner comes in, which will be in about five minutes. You will have the goodness to stand on each side of the room, and leave the middle open, so that the prisoner may pass on directly from the door to this table." He then left us, and we disposed ourselves as he had directed. It was not a large room, nor had it been before used for such a purpose as the present. The window looked upon a confined yard in the centre of the prison—and the revolving iron spikes with which the tops of the walls were fortified, together with the gloomy, massive, and ponderous appearance of everything about us, reminded me of the inscription—

"Who enters here give up all hope!"

At the end of the room, opposite to the door, leaning against a kind of dresser, stood three men, the one in the middle, a short, sallow-visaged man, in a shabby old drab greatcoat, proved to be the hangman, "Jack Ketch," and the other two were his assistants. These grim ministers of death were standing in silence when we entered. He in the middle had his hands stuck into his hind coat-pockets, where doubtless were the cords and rope, ready to be produced the instant they were wanted. A gentleman who stood between me and the nearest of the three men, now and then whispered to him, and I heard a little of their conversation.

"Did he die well?" inquired the former, speaking of some malefactor whose name I could not catch.

"Yes, most *uncommon* game indeed. The Captain was a gentleman, sir, every inch; I hanged him—and he deserved a better fate!"

He was asked if the prisoners did not often appear overcome with fear.

"Lord, sir! frightened? I warrant me some on 'em is indeed. Some make *such* a noise, and cries dreadful! I've often told 'em to keep up, for that they ha'n't much longer to be in misery! Sometimes they can't stand up at all, sir—and are obligated to be held by the sheriffs and parson. How their knees tremble!—I recollect there was one young chap for forgery—we shan't never have any more to hang for *that* matter, how's ever—he went through all uncommon well. But directly he caught sight of us standing, as we may be now, ready to tie him, at was quite wonderful, but he went as white as your shirt, sir, in a twinkling—and began to cry about his poor wife. Do you remember him?" appealing to his principal, who simply nodded.—"This man, sir, as is to die this morning, has a wife, poor thing—and she's to be brought to bed, they say, in a day or two. Isn't it sad, sir? But it's *fate*, you know, sir."

"You've not had much to do lately, have you?"

"No, sir, very little, uncommon little. It's pretty near a good four years since any one suffered here."

"Yours is a horrid employment!"

"Y—y—es—es, people thinks so, and so it is, I suppose—but use, sir—use, you know—and *some* one must do it"——

Here the slight whispering that had been carried on was suddenly stilled by the governor making his appearance, putting his finger on his lips. After a little widening the space between the two rows of anxious expectants, and entreating us not to press forward when the prisoner entered, he withdrew. My heart began to beat hard and quick. In a few moments the sheriffs and undersheriffs, with their staves, entered: then the ordinary (the Rev. Mr Cotton) in his gown and bands—his long flowing white hair and kind intelligent features giving him a striking and remarkable appearance; then followed a man with a slow firm step, walking unassisted,

apparently listening to an earnestly-whispering Dissenting minister, to whose congregation he had belonged—his countenance solemn and composed, his eyes fixed, and his hands clasped together. This was the miserable Pegsworth!

He was dressed in a somewhat shabby claret-coloured body-coat, with velvet collar, a black neckerchief, a dark waistcoat, and corduroy trousers. He was about five feet seven or eight inches in height, and of a robust frame, with a tolerable head of dark hair, and looked just about as old as he really was—thirty-six. I stood within a yard of him, and narrowly scrutinised his features. They appeared rigid, as if with the efforts he was making to preserve his firmness, in which he surprisingly succeeded. Their expression seemed naturally heavy and sullen. The knotted forehead, the high cheek-bones, the peculiar *setting* of the eyes, the protuberant upper lip, the *tout ensemble* of his features, in short, was that of a man quite capable of committing the diabolical act of cruelty for which he was now about to suffer, and not a little mitigated the agonising sympathy, or pity, his present circumstances were so calculated to excite, by reconciling one to the removal of such a being from amongst us. He walked, as I have described, firmly and slowly to the middle of the room, when the sheriffs motioned the executioners to advance. They instantly came forward. One of them, drawing out a slender cord, tied the miserable man's hands together at the wrists; a second passed a stronger cord round his arms, and fastened it at his elbows; while a third untied his neckerchief, and thrust it into the prisoner's bosom. While this frightful ceremony was going on, Pegsworth did not move a muscle, his eyes were fixed upwards as if in intense devotion—(I shall never forget their dreadful expression)—and though his lips slightly moved, he uttered no sound. Once, and once only, did his pent bosom relieve itself by a half-suppressed sigh, when

he felt the executioner's hands removing his neckerchief. He behaved, in short, with amazing firmness and decorum. "Believe in the Lord Jesus," whispered the Dissenting minister, after a moment's pause. Pegsworth fixed his leaden eye upon the speaker, but spoke not. How fearful was his quietude! His passiveness, in the hands of those thus preparing him for immediate death—a man in the prime of life, in full health, leaving behind him wife and children!

At length the preparations, which had not occupied more than three or four minutes, were completed, and the chief executioner, gently turning the prisoner with his face towards the door, shook his pinioned hands as if asking forgiveness for the act he was going to perform, and passed hastily out of the room, followed by his two assistants. The procession was immediately formed, and began to move towards the gallows. First went the sheriffs and the undersheriffs; then followed the ordinary, Mr Cotton, reading the burial-service—how I shuddered! the burial-service over a living man!—then the criminal; the other religious attendants; and we brought up the rear, I among the foremost.

"I am the Resurrection and the Life, saith the Lord," commenced the clear and solemn voice of Mr Cotton, as the procession began to move slowly along. "He that believeth in me, though he were dead, yet shall he live: and whosoever liveth and believeth in me, shall never die."

"I know that my Redeemer liveth." At this moment, just as we were entering a long dark passage, the dismal tolling of the prison-bell smote my ear and fell upon my heart, and continued at short intervals till all was over.

"I know that my Redeemer liveth, and that He shall stand at the latter day upon the earth; and though after my skin, worms destroy this body, yet in my flesh shall I see God, whom I shall see for myself, and mine eyes shall behold, and not another!"

Here was a pause for about half a minute, which brought us very near the dreaded spot. "We brought nothing into this world, and it is certain we can carry nothing out——" Here I lost his voice, for he had passed out of the Debtor's door into the open air, and his solemn voice was drowned in the noise of the crowd, which *we* could not see, shouting, "Hats off!—hats off!"

The gallows stood at about six feet distance from the spot where I was placed. On it stood the executioner and his assistants, waiting for the prisoner, who, following Mr Cotton, and followed by two ministers, mounted the steep steps unassisted, and walked calmly to the spot from which he was to sink into eternity, suffering the executioner to place him exactly on the drop, and under the chain to which the rope was to be attached. He continued in exactly the same attitude, and with the same expression of countenance, that we had witnessed in the Press-room. The cap was quickly drawn over his head, down to his chin—the rope adjusted round his neck—the steps by which the hangman had mounted to attach the rope to the beam were laid down, and then every one left the gallows but Mr Cotton, and Mr Baker.* The prisoner stood, in these appalling circumstances, firm as a rock—neither his hands nor knees moved or trembled in the slightest. The executioner took his place at the foot of the gallows, out of the sight of the crowd, and, with his hand upon the lever by which the plank on which the prisoner stood was to be let fall, fixed his eyes upon Mr Cotton, awaiting the signal. Standing closely opposite to the prisoner, Mr Cotton resumed, in a distinct, deliberate manner, the reading of the burial-service, an awful silence prevailing among the spectators.

"Man that is born of a woman hath but a short time to live, and is full of

misery. He cometh up and is cut down like a flower; he fleeth as it were a shadow, and never continueth in one stay. In the midst of life we are in death: of whom may we seek for succour but of thee, O Lord? who for our sins art justly displeased! Yet, O Lord God, most holy! O Lord, most mighty! O holy and most merciful Saviour! Deliver us not into the bitter pains of eternal death."

As these words fell from Mr Cotton's lips, Pegsworth suddenly hung quivering before him in mortal agonies, for he had, unperceived by me, given the dreadful signal, and now retired as quickly as possible. Frightful as was the object, my eyes were riveted upon the swaying body with a kind of fascination. After a few convulsive heavings, life seemed extinct; and the murderer had passed into the immediate presence of Him whose decree it is that *whoso sheddeth man's blood, by man shall his blood be shed. Moreover, ye shall take no satisfaction for the life of a murderer, who is guilty of death, but he shall surely be put to death: for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.*

As I had some acquaintance with the reverend Ordinary, he invited me to accompany him to breakfast in the Sheriff's room, at the other extremity of the prison; for, as the courts opened at half-past nine, the Sheriffs and Undersheriffs breakfasted there that morning, in company with the Ordinary and the other ministers who had attended Pegsworth. I perceived that none of us was disposed to eat a hearty breakfast. The evident oppression and faintness of several present procured a supply of brandy—a glass of which proved, to me at least, a real restorative. The conversation naturally turned upon him whose end we had just witnessed—the victim of Satanic passions, who was at that moment hanging a miserable spectacle before the assembled thousands around Debtors' door. It seems that

* This was another Dissenting minister, who had for years attended on such occasions, to assist in offering spiritual consolation to the condemned.

he had been a pretty regular attendant at the meeting-house of the denomination to which he belonged—I believe, the Independents—and had always borne a good character, particularly as a quiet, mild, and peaceable man. Everybody, it was said, that had known anything of him, thought he would have been one of the last men in the world to commit murder. This set me reflecting upon the impression his countenance had made upon me: when I recollected the sullen cast of his features, and adverted to the account of the brutal ferocity with which his crime was perpetrated, I did not participate in the astonishment I heard expressed by those around me. It was possible that he might have always appeared a quiet and inoffensive man, and yet been all along, at heart, of a cruel and ferocious disposition; his dull phlegmatic temperament, inaccessible to the ordinary stimulants and excitements to which irritable, mercurial, and vivacious temperaments are liable. This it was—his comparative torpor and insensibility—that secured for him, as it secures for many others, the character which I now heard assigned to him. The moment, however, that his deep-seated passions were appealed to by an adequate stimulus, see what a fiend was manifest! How trivial the provocation, if any even at all! how deliberate the contrivance! how ruthless and diabolical the execution of his fell purpose!

He had acknowledged to Mr Cotton, a day or two before, that he went into Ready's parlour for the purpose of stabbing him; but that, after conversing with his intended victim, his heart failed him; and he was on the point of leaving the room, repenting of the horrid purpose for which he had entered it, when poor unconscious Ready said to him, "And you, Pegsworth, a religious man! you not pay your just debts!"—"On which," said Pegsworth, "I turned round instantly and stabbed him to the heart. I should never have done it, but for his reproaches on the score of my religion."

For about a fortnight after the per-

petration of his crime, he exhibited, as his religious attendants assured me, the most hopeless hardheartedness. "He was like a rock—no making any impression on him, or extracting any expression of compunction or remorse." His wretched wife, when she first came to visit him, he repulsed, I understand, and told her "to go along home and look after her children." Latterly, however, the near and inevitable approach of death, added to the unceasing exertions of his spiritual advisers, brought him to a better frame of mind. If he did not exhibit that hearty and abundant contrition for his enormous offence which could have been desired, at least he acknowledged his guilt, and fervently besought the pardon and mercy of God, in the ordinances of religion. He clung to his Dissenting teacher to the last. The following is a *verbatim et literatim* copy of a letter which, late in the night preceding his execution, he addressed to Mr Cotton. I copied it myself. His handwriting is perfectly firm, good, and business-like; there is not an instance of bad spelling or bad grammar. Some of the expressions are singular and significant:—

"Monday Evening, March 6th, 1837.

"REV. SIR,

"I address these lines to you, to thank you for kindness to me during my confinement in Newgate, and for your kindness in giving me my choice of a minister; believe me, rev. sir, it was not in any religious scruples that I preferred Mr Kelly—it was because I had known him some time; had I known you as well as I do now, I should have been perfectly satisfied with your ministry. I feel particularly obliged to you for your anxiety for my soul, and the kind admonitions you daily offered me; and I trust, thro' the influence of the Holy Spirit, and the merits of my Redeemer, I may be introduced into the kingdom of God, clothed in the robes of Christ's righteousness, where God will wipe away all tears from my eyes. Hoping that God will support me to the

last, and that he will abundantly crown your labours,—I remain, rev. sir, your obliged servant and penitent sinner,

“JNO. PEGSWORTH.

“The Rev. Mr Cotton, Newgate.”

He went to bed on Monday night at eleven o'clock, desiring that he might be called at four; but his attendants, finding him sleeping very deeply, suffered him to sleep on till five, when they awoke him, and he calmly dressed himself, and immediately entered upon his religious duties. At seven o'clock he ate a hearty breakfast! I cannot account for the latter of these two circumstances. Both of them, I was told, occur almost invariably; and the former may be explained by the utter and extreme exhaustion both of mind and body, which are unable to resist the influence of sleep. What a moment must be that of returning consciousness, on awakening!

Though the mental suffering the prisoner had experienced ever since the perpetration of his crime, and during a period of nearly two months, must have been great, yet even when close confinement was added, it did not make any alteration in his health or appearance. He looked as stout and healthy at the moment of being led to the gallows as when he was first taken into custody. Surely there are not many of us who would not, in half the time, have been worn to a skeleton, and reduced to the last state of mental exhaustion!

I forgot to mention that he had passed, in his progress to the gallows, over the very spot where his remains were, the next midnight, interred by torchlight, next to those of Thistlewood and Brunt, in one of the passages of the prison.

About nine o'clock the City Marshal intimated that it was time for the Sheriffs to go and order the body to be cut down. We all accompanied them. Exactly as the clock of St Sepulchre struck nine, the hangman ascended the gallows—his appearance proving the signal for shouting from

the crowd, who uttered many coarse and insulting expressions concerning him; and placing the steps behind the drop, he ordered his two assistants, who were beneath, to receive the body: then placing his left arm round it, with a clasp-knife he severed the cords that bound the wrists and arms, and the rope by which he was suspended. The body was then laid on a plank, and brought immediately into a room within the prison. When the cap was removed, very little distortion of the features was visible; they were sallow, and bedewed with a cold sweat, especially about the upper lip. He was quite cold. Two men immediately removed his coat and waistcoat, and began to cut off his hair—I believe in order to make preparations for Mr Deville, a plaster-cast man in the Strand, to take a cast of his countenance. Those who now saw the features—which, as I have already stated, were nearly in a state of repose—on deliberately examining them, agreed with me that they evinced a sullen and ferocious disposition, as far as any reliance may be placed upon physiognomy. His arms and legs were very muscular. A few minutes afterwards I left the dreary spot—and, thanking the authorities for the polite attentions I had received, quitted the regions of the Old Bailey, glad to find myself again amid the active scenes of life, with the faces of my friends and family about me. I shall never again attempt to witness such a scene. I am not sorry that I have once observed it, and enabled myself to bear testimony to the solemnity, the decency, the feeling, with which “the dread sentence of the law” is carried into effect. I can conceive no scene more tremendous than that which I have here attempted to describe. It is true that the main part of it is restricted to the privileged few who, like myself, were admitted within the prison: but even that portion of it which is witnessed by the public is awful enough to produce salutary effects upon the observer. Undoubtedly crowds at executions have been generally and correctly described

as noisy and heartless—evincing little emotion, either of fear or pity. This may be the case with the bulk of the desperate wretches who congregate upon such an occasion, and yet afford no sufficient justification of the opinion of those who assert that capital punishment, and the public infliction of it, is ineffectual in deterring others from incurring the like penalties. We see with disgust the insolent hardihood of a few swaggering ruffians: we cannot penetrate into their bosom, —or we *might* see a heart shrunk with horror; and, above all, let us reflect how many that are not witnesses of the execution, but know it is going on, may be quailing in their guilty haunts, and arrested in a career of crime.

THE MYSTERY OF MURDER, AND ITS DEFENCE.*

THE legal profession, and the public, were equally taken by surprise, on Tuesday, the 20th November 1849, by the conspicuous appearance in the *Times* newspaper of that morning, of a correspondence, consisting of two letters, between Mr Charles Phillips† and another member of the Bar, on the subject of the former's defence of Courvoisier, the Swiss valet, who so barbarously murdered his sleeping master, Lord William Russell, in Norfolk Street, Park Lane, in May 1840. The counsel in question, in a brief note, dated the 20th November, called the attention of Mr Phillips to "an accusation recently revived against him in the *Examiner*; alluding to the following passage, which had, about a fortnight previously, appeared in that newspaper:—"How much worse was the attempt of Mr Phillips to throw the suspicion of the murder of Lord William Russell on the innocent female servants, in order to procure the acquittal of his client, Courvoisier, of whose guilt he was cognisant!" Mr Phillips was reminded that as this accusation had been thus renewed against him after his elevation to a responsible judicial office, he ought to lose no time in offering, as the writer of the note in question believed he could truly do, a public and peremptory contradiction to such serious allegations; and the writer added, that he had been told by Lord Denman that he had inquired into the matter, and found the charge to be utterly unfounded; that Mr Baron Parke, who was present at the trial, and had closely watched every word that Mr Phillips uttered, had given his lordship decisive testimony against the truth of the charges which had been brought against Mr Phillips on the occasion in question. To this note, Mr Phillips, a few days afterwards, replied, in an interesting letter, couched undoubtedly in indignant and contemptuous language; and the editor of the *Times*, to whom both were sent for publication by Mr Phillips, on the same day on which the cor-

* 1. *Correspondence relative to the Trial of Courvoisier.* With a Preface and Appendix. 1849.

2. *The Times Newspaper*, from May 7th to June 30th, 1840, and for the 20th November 1849.

3. *The Examiner Newspaper*, for 27th June 1840, 11th July 1840, 24th November 1849, and 1st and 8th December 1849.

4. *The Annual Register* for 1840. Vol. lxxxii. pp. 229-244.

5. *Minutes of Evidence, taken in Short-hand, at the Central Criminal Court.* Published by Authority. Vol. xii. pp. 216-271.

† Now Mr Commissioner Phillips. This paper appeared in the *Law Review* for March 1850; and is inserted in THE MISCELLANIES on account of the extraordinary interest of the case to which it refers; and also of the question to which it gave rise, with reference to the conduct of an advocate, placed in circumstances of sudden and almost unprecedented difficulty, by a confession volunteered privately by the prisoner during the progress of the trial to that advocate, whom he nevertheless required "to defend him to the uttermost!" The author expended much time and labour in thoroughly investigating the charge, perseveringly made by a weekly London journal for years, against the advocate in question, of atrocious misconduct in calling God to witness his belief that one was innocent who had just confessed himself guilty; and with attempts to attach the crime to an innocent fellow-servant of the prisoner. After the publication of this paper, the charge was never reasserted; and the author had the satisfaction of being assured by one of high station and authority, that the paper was characterised by judicial impartiality and temper, and that it formed an unanswerable vindication of libelled innocence.

respondence appeared, called attention to it, in a leading article, temperately but emphatically pronouncing Mr Phillips' statement conclusive on the subject, forcibly observing, "that it would have been well had he given to the world, nine years before, the very complete justification of his conduct in the Courvoisier trial, which appeared that morning in their columns." That "no man could afford to despise the general opinion of mankind, and least of all one who, by circumstances, whether of necessity or inclination, occupies a somewhat prominent place in the public eye." That "had Mr Phillips uttered, long before, a denial so emphatic of the charges brought against him, he would at once have silenced the slander which had so long associated his name with unscrupulous advocacy, and inhuman carelessness of the life of an innocent fellow-creature." The example of the *Times* was promptly followed by almost the whole metropolitan and provincial press; several journals, in a praiseworthy spirit of candour, adding an expression of regret that they had ever lent assistance, unconsciously, in giving currency to misrepresentation. Rarely, in short, has an old but suddenly revived accusation received so sudden and successful an answer.

On the ensuing Saturday, however, the *Examiner* reprinted its two articles of the 27th June and the 11th July 1840, containing the original charges, professing deliberately to reaffirm them; accusing Mr Phillips of having "done his best to evade every charge specifically brought against him by the *Examiner*;" and offering conclusive evidence of the truth of those charges, in the shape of extracts from the *Times* newspaper, which had reported the proceedings out of which the accusation against Mr Phillips originated. The *Examiner*, doubtless irritated by the vehement and scornful tone of Mr Phillips' letter, expressed its reaffirmed charges in very bitter terms; and also in the ensuing two numbers inserted extracts from several other

newspapers; complaining also of the precipitancy of fellow-journalists in authenticating a charge of calumny against it, without having paused for its rejoinder, but presumed Mr Phillips' answer complete. Several journals, both in town and country, shortly afterwards recanted their recantation, acknowledging their rashness, and declaring their belief that their contemporary had "made good his charges to the letter." One of our professional contemporaries, on the 24th November, in handsome terms expressed regret at having ever acquiesced in the belief that a member of the profession had been guilty of cruel and unconscientious conduct, "and thereby unintentionally joined in a wrong." That they "were bound to say, that after reading the letter of the learned Commissioner, no doubt remained on their minds that his conduct was misrepresented; and that in most painful and trying circumstances he did exactly what a right-minded man and a conscientious advocate ought to have done." On the 15th December, however, the same journal announced that it had once more undergone a total change of opinion. "We have, since the 24th November, procured the report in the '*Times*' of June 22d 1840; and we are bound to say that every particular in the '*Examiner's*' charges is strictly proved. Mr Phillips was accused of having appealed to heaven as to his belief in his client's innocence, after receiving a confession of his guilt. We have gone into this detail, derived from our own perusal of the *Times*' report, in order to show that we are not now relying, as we did before, on an *ex parte* statement." The *Times*, however, and the great majority of the other journals, indicated by their silence, and by some replies to the *Examiner*, contentment with their originally expressed opinion. Thus the matter stands with the press. In professional circles the matters in question have afforded topics for much and grave discussion; and we have felt it our duty as an independent organ of professional opinion, to ex-

amine into the matter temperately and candidly; regarding it as one, not of professional etiquette and usage merely, but of professional honour and morality. It is this consideration alone which has induced us to make topics appearing in the columns of the *Examiner*, a non-professional weekly journal, the subject of comment in our pages. Consideration also for Mr Phillips, as a gentleman of long and distinguished standing at the Bar, and whose reputation, save in the matters above referred to, has never, that we know of, on any occasion been sullied by even the suspicion of misconduct, conduces to urge upon us the duty of sifting this matter thoroughly, in order to see if there be any real foundation for imputing to him this solitary instance of grave misconduct. The charge is one which ought never to have been made, much less avowedly "from time to time,"* reasserted by any journal, or by any person, except upon the surest grounds, the clearest evidence, and after dealing with that evidence with perfect candour and impartiality. We have carefully referred to every source of information within our reach, and are now prepared to submit the result of such investigation to our readers.

In examining into the propriety or impropriety of a particular line of conduct, it is obviously desirable to be placed, as far as possible, in the position, at the time, of the individual whose conduct is the subject of examination;—to look at the doubtful and obscure aspect which it presented to him, in the order of events, and not as illuminated by those brought afterwards into existence. For this purpose we shall give, as briefly as possible, a narrative of the circumstances attending the discovery of the appalling assassination of Lord William Russell; whose murderer selected as his leading advocate, in Mr Phillips, a gentleman of brilliant eloquence, of great experience, and characterised by a zealous devotion to the cause of his clients. In the midst of his powerful exertions on behalf of a client,

whom there appears no doubt that both he and his brother advocate in the cause believed, as they still declare that they *did*, innocent—exertions but too likely to have proved successful, owing to the extraordinary mystery in which the circumstances of the case were enveloped,—his execrable client almost paralysed him by a confession of his guilt, accompanied, nevertheless, by an injunction "to defend him to the uttermost!"† Having thus barely alluded to this signal circumstance, we request our readers to dismiss it for a while from their minds, and follow us while we narrate the leading circumstances of the murder, in the order of their occurrence, as they appear in the official shorthand writer's notes of the evidence taken at the Central Criminal Court, and published every session by authority.

On Tuesday night, the 5th of May 1840, Lord William Russell, infirm, deaf, and aged, being in his seventy-third year, retired to bed at his usual hour. He was a widower, living at No. 14 Norfolk Street, Park Lane, a small house, occupied by only himself, and three servants—Courvoisier, and two women, a cook and housemaid. The latter two had lived with him for about three years; but Courvoisier, a young Swiss valet, had been in his service for only five weeks, having come to it from that of Mr Fector, then the Member for Dover, with an excellent character. It would appear, however, that he did not like his situation as much as he had expected, and was piqued at receiving lower wages than had been given to his predecessor. He occasionally complained, moreover, of the peevishness of his new master's temper, expressing surprise how the former valet could have lived with him so long, and a doubt whether his own temper would allow him to do so. He also said, in the course of conversation with his fellow-servants, that he was not as well off in his circumstances as when he had come over to England; and on two occasions spoke to them of his master

* *Examiner*, 24th Nov. 1849.

† *Correspondence, &c.*, pp. 11, 27.

thus:—"Old Billy was a rum old chap, and if *he* had his money, he would not remain long in England!" On the housemaid (whose name was Sarah Manser) telling him that "his lordship was not a very rich man," he replied, "Ah, old Billy has money; and if I had it, I would not remain long in England." These expressions he used twice; once, shortly before attending his master to Richmond, on the 5th of April, where they stayed till the 22d of that month; the second time, shortly before the 5th of May. He said this, however, in a jocular manner, and it attracted no attention from his fellow-servants; with whom, it may be stated, he lived on the most friendly terms. On the day last mentioned, some conversation had passed between them relative to money matters, in the course of which Courvoisier spoke of his having only £5 or £6 left, with the exception of £8 and a few shillings at the savings' bank; and that he should soon have to ask his lordship for some money. Shortly before Lord William and Courvoisier went to Richmond, the latter was observed by one of the servants to have brought his lordship's dressing-case down into the pantry,—a circumstance which had never occurred, to her knowledge, in the time of the former valet; and on the day of their going to Richmond, she also saw him there with his lordship's cash-box, which his lordship had left unlocked. Courvoisier accounted to her for it, however, by the remark, that he had brought it down *because* it was unlocked, and he knew his lordship was going to take it with him that day to Richmond. Both the dressing-case and the cash-box were always kept by Lord William in his bedroom. Another circumstance also is not unworthy of notice,—that the same fellow-servant, the housemaid, had on more than one occasion seen Courvoisier apparently peering inquisitively into the "property" in almost (she afterwards stated) "every room" in the house; and on her asking him what he was about, he answered simply that he was "looking for something."

On the 5th of May, Lord William had given Courvoisier orders for the carriage to be sent to Brookes's Club by five o'clock that afternoon, but Courvoisier forgot to communicate the orders to the coachman; and Lord William, naturally somewhat irritated, returned home in a street cab about half-past five, and rebuked Courvoisier for his forgetfulness, at first peevishly: but, as Courvoisier stated, he quickly resumed his good humour. He dined at home, alone, that day; and in the evening repaired, as was his custom, to the back drawing-room. The cook (whose name was Mary Hannell), having sate at home after dinner, working till towards nine o'clock, laid her work aside, putting her materials, including *an old silver thimble*, worth little more than a shilling, into her work-box, which she placed in the cupboard, in the kitchen, and then went out for about an hour, returning a little before ten o'clock. Courvoisier let her in by the front street door, which he then shut, closing both bolts, and barring, locking, and fastening the chain across the door. Whilst she was preparing her supper, he went out for her beer, through the area door and gate; and on his return locked both as usual. About a quarter past ten o'clock, the housemaid went up to bed, leaving Courvoisier and the cook in the kitchen, observing, as she passed the door of the back drawing-room, his lordship sitting there, with candles, as was usual with him at that period of the evening. She then went into his bedroom, where she lit his fire, and placed a rush-light—a *whole* one—in the shade, his lordship being in the habit of burning one. The bedroom had three windows, the bed being between them and the door, which was covered with green baize, had a spring on, and opened and shut noiselessly. The back bedroom adjoining was used only as a lumber-room, one door of it opening on the landing, and another communicating with the front bedroom.

On quitting the latter, the housemaid went up to her own bedroom,

which was immediately over that of her master. She and the cook occupied separate beds, but in the same room, which was separated from that of Courvoisier by such a slight partition as admitted of almost the smallest noise in the latter being heard in that of the women servants'. Just before the cook retired to bed, which she did about a quarter of an hour after the housemaid, Courvoisier was summoned up-stairs by his lordship's bell; and on his return went into his pantry, where he was occupied when she went to bed. Courvoisier always remained up after the other servants to attend his master. It was his business to warm the bed; and having done so, to take the warming-pan down stairs. He had once omitted to do this, and the housemaid had blamed him for leaving it on the bedroom landing.

On the women servants going to bed, they soon fell asleep, neither seeing nor hearing anything more of Courvoisier; and they slept soundly all night, not being disturbed by noise, or any occurrence whatever, nor having either of them quitted their bedroom. About half-past six o'clock the next morning, which was a little earlier than her usual time, the housemaid got up, leaving the cook, as she supposed, asleep, in bed; and neither of them having spoken, she quitted her room about a quarter to seven o'clock. She tapped at Courvoisier's door, as she was accustomed, in passing it, but he made no answer. On reaching Lord William's bedroom landing, she found the warming-pan lying there; and supposed that Courvoisier had again forgotten it. Stepping over it, she entered the back bedroom to get her broom; and then, leaving the warming-pan where she had found it, went down stairs, and opened the window in the back drawing-room. She then saw some appearance of disorder in the room—the writing-desk turned round, and "jammed up with papers," and the drawers open. She also noticed a screwdriver lying in the chair; and some papers, and a bunch of keys, lying on the hearthrug. Having before seen his lordship's papers lying about

on the floor, nothing occurred to her on the subject; and she proceeded to open the windows of the front drawing-room, where everything was in the state in which she had left it on the preceding evening. On going down stairs and reaching the passage, however, she was "surprised" to see a number of articles lying in it, consisting of his lordship's blue cloak "folded up very neatly," his opera glass, a small trinket-case, and a number of articles tied up in a napkin, which she did not open, but recognised as having given it out to Courvoisier, for his lordship's dinner, on the Monday previously. This napkin, on being subsequently examined, was proved to contain a number of small gold and silver articles, the property of Lord William Russell, and generally worn about his person. On looking towards the street door, the housemaid observed that it was closed, but only by the latch,—neither chained, locked, nor bolted, so that any one could have opened it from without. Somewhat surprised, but still not alarmed, by what she saw,—attributing the state of the door to Courvoisier's forgetfulness, as had once before been the case,—she entered the dining-room to open the shutters; and then beheld that which, combined with what she had already seen, greatly alarmed her, namely, articles scattered about on the floor, and all the cupboards and drawers open. She immediately ran up-stairs, much terrified, to the cook, whom she found still in bed, and hurriedly asked her "if she knew whether anything had been the matter last night?" To which the cook answered, "No;" telling her to call Courvoisier; on which she went to his door knocked, and exclaimed, "Courvoisier, do you know of anything being the matter last night?" To which he answered, "No;" and immediately opened the door. He was dressed as he usually was in the morning, with the exception of his coat. She said, "All your silver and things are about!" on which, "looking very pale and agitated," without making any answer he hastened down stairs, put-

ting on his coat as he went, followed closely by the housemaid. He went down direct to the pantry; and on seeing things there in confusion,—the cupboards and drawers open,—exclaimed, "My God! some one has been robbing us!" The housemaid said, "Let us go up-stairs;" and on their reaching the passage, she exclaimed, "For God's sake let us go *and see where his lordship is!*" They hurried up stairs. Courvoisier going first, she closely following him. He went by the green baize door into Lord William Russell's bedroom, the door closing on him before the housemaid could enter; she pushed it open, however, and followed him, and found him in the act of opening the middle window, having for that purpose passed the foot of the bed. As soon as she had reached it, she exclaimed, "My lord! my lord!" Courvoisier exclaimed, "There," or "here he is!" and on looking towards the bed, she did not see Lord William, but observed blood on the pillow, on which she rushed screaming from the room, running first a few steps up the attic stairs towards the cook's room, but then down stairs, and into the street, where she rang the bells of two neighbouring houses. On returning, she saw the cook near the passage, whom she told that his lordship was killed; and on hastily entering the dining-room, she saw Courvoisier sitting down, apparently writing on a slip of paper, and exclaimed with agitation, "What the devil do you sit there for? Why don't you go out, and run for some one, or a doctor?" to which he replied, "I must write to Mr Russell," meaning the son of Lord William, and who lived near Belgrave Square. The housemaid said that some one ought to be sent for him; on which Courvoisier went to the street door, and observing a labouring man passing, called him; but the housemaid said, "Don't call such a man as that;" afterwards explaining that she had not thought him a proper person to despatch on such an occasion to Mr Russell, and also not believing that Courvoisier meant to send him. Lord William Russell's coachman and groom,

who had been sent for, the servants of the two neighbouring houses, the police, and the medical men, one of them the ordinary attendant of his lordship, were quickly in the house; and on entering his bedroom, beheld him lying in the bed, his face covered over with a towel; on removing which, and pulling down the clothes, a ghastly spectacle presented itself. He lay weltering in his blood, and his head was nearly severed from his body by the stroke of some weapon which must have caused instantaneous death. None was ever found in the room. No blood was on the counterpane, nor had any, with the exception of a little on the pillow, been visible till the towel and bed-clothes had been removed by the police and medical men. Courvoisier was present, standing at the foot of the bed, when they revealed the horrors, till then concealed; and on witnessing it, he elevated his hands, and sank back into a chair dreadfully agitated, exclaiming, "Oh dear! this is a shocking job; I shall lose my place, and character!" On the police casting their eyes round the room, they beheld a candle, burnt out, standing on a shelf, but too far off for any one in bed to have been reading by, and a rushlight only partly burnt, and which had not been *blown*, but apparently *burnt out*. On the floor, between the window and the bed, lay a book (the "Memoirs of Sir Samuel Romilly,") with a pair of spectacles in it; Courvoisier saying that he had left his lordship reading in bed about half-past twelve o'clock. There was a key in the door, and Courvoisier, on being asked the question, said that his lordship never locked his door at night. As soon as the medical men had looked at the wound, they desired everything to be replaced precisely in the state first discovered; and Courvoisier assisted the police in doing so. While they were examining the state of the property, he answered their questions about it in a frank and natural manner, pointing out the absence of some valuable articles which he said he had seen in his lordship's possession only the day before, and others which he

showed the police; one of whom, on observing that they were more valuable than those described as missing, observed, probably in a pointed manner to Courvoisier, "It is a very curious thief to leave all this valuable property behind!" to which he replied, "It is certainly very strange!" Taking up a note-case, he opened it; and on finding it empty, remarked, "There was a £10 and a £5 note here yesterday," and also explained that his lordship's watch, and rings and pins, were missing. He was much agitated; continually exclaiming, "What shall we do? what shall we do?" While putting aside some of the articles of property in the dressing-case, in the presence of one of the police, he said, "I have lived with his lordship only five weeks, and what shall I do for my character?"—All the three servants were immediately placed under the eye of the police, to prevent communication with one another. The inspector (Tedman) went up stairs with Courvoisier, to his bedroom, where he opened his box, and showed him everything in it; but there was nothing to occasion the slightest suspicion, "nor anything at all tending to explain the case;" and on his hands and person being also examined, there was no mark or spot of any kind to be seen. In short, all the three servants voluntarily offered their boxes to be searched by the police, who found nothing whatever calling for observation. On one of them going down with Courvoisier to the basement, the latter went suddenly up to the door leading into the back area, and partly open, on which he pushed it wide open, and exclaimed, "Oh, here is where they came in!" pointing at the same time to sundry marks and bruises on the edge of the door and door-posts. "Some of you in the house have done this deed," said the inspector; and Courvoisier answered, "If they have, I hope they will be found out." "There is not much fear," he replied, "but what they will." Suffice it to say, that on examining the state of things at the back of the house, it appeared, on consideration,

to show conclusively that no one could have entered the house that way without having left distinct traces of his passage; and also that the marks pointed out to them on the door appeared spurious—not those of burglars. Though some of the police at first thought that the marks had been made from without, they expressed themselves as afterwards satisfied that they had been made from within, and in such a manner as to lead to the suspicion that the object had been to counterfeit a breaking into the house. On a policeman showing Courvoisier the screwdriver lying in the back drawing-room, and asking him if it belonged to the house, he said, "I believe it does." "Did his lordship use it yesterday?" inquired the policeman; to which Courvoisier replied, "I am sure I can't tell you." On going to the sideboard in the dining-room, and finding the drawers pulled out, and plate and plated articles lying on the floor, the policeman said, "Is there anything missing here?" Courvoisier answered, "Some spoons and forks, but I cannot tell you how many at present." On seeing the cloak and other articles lying in the passage, the policeman asked Courvoisier if they were his lordship's property; and on being answered "Yes," the policeman said, "No thief would ever leave this property behind;" to which Courvoisier replied, "It is certainly very odd." Being asked how he had left the street-door over night, he immediately put up the chain, bolted, and locked it, and said that he had so left it; and then unchaining, unlocking, and unbolting it, and putting the spring of the lock back on the hook, said, that such was the state in which he had found the door that morning.

The consternation with which this dreadful occurrence filled all London, and, indeed, the country at large, we well recollect, as doubtless do most of our readers. A coroner's inquest was held the next day, the foreman of the jury being the Right Hon. G. Dawson: at which Courvoisier and the women servants were examined, but gave their evidence in such a way as

to allay all suspicion of their having been concerned in, or cognisant of, the murder. Mr Dawson said that Courvoisier's former master, Mr Fecor, had given him, that morning, an excellent character of Courvoisier,—a fact immediately corroborated by another member of the jury. The principal of the police, Inspector Tedman, deposed as follows:—"I did not see the slightest marks of blood about any of these people, or in any part of the house. I examined all the places I possibly could, and there was not the slightest tinge of blood about them, on the linen, bed-curtains, or anywhere else in any part of the house." At the close of the inquiry, the coroner and the foreman, with the rest of the jury, concurred in the propriety (with a view to allaying public excitement, and checking unjustifiable rumours and suspicions) of at once returning a verdict of "Wilful Murder against some person or persons unknown;" leaving the inquiry to be vigorously prosecuted by the police. The three servants returned to the house of Lord William Russell, not in custody, but simply in the company and presence of the police, who never quitted the place, and took care to prevent any communication between them otherwise than in the presence of the police. None of them tried to escape, nor did their conduct indicate anything beyond the distress which was natural to persons so circumstanced. A leading article in the *Times* of the ensuing day (8th May) thus commences:—"At the close of the second day after the commission of a barbarous murder at the house in London, of a nobleman, it appears that the police are without any clue that can lead to the discovery and apprehension of the murderer." In another part of the paper, it was said, "The general opinion in the neighbourhood is, that the murderer, whoever he may be, must have been secreted in the house from an early hour in the evening, or possibly might have got down the area steps soon after ten o'clock, when the valet went to get the beer for the cook's

supper." Public censure began to visit the police, for their alleged inefficiency; and, on the same day, their diligence, and that of others, was stimulated by the appearance of a reward of £450; of which £200 was contributed by the Government, and £200 by the family of the deceased nobleman, with £50 for the discovery of a considerable quantity of missing plate. Here we deem it of great importance to present, from the evidence subsequently given at the trial, an account of the progressive discoveries alleged to have been made by the police, in the box of Courvoisier, beginning with the search by Inspector Tedman, to which allusion has been already made. He appears to have been an excellent officer, at once shrewd and candid; and who, though he afterwards gave destructive evidence against Courvoisier, was justly complimented by Mr Phillips on the fairness with which he had done it. The following is his evidence as to what occurred on his first examination of Courvoisier's room and box, on the morning of the discovery of the murder:—

"Courvoisier showed me into his bedroom: I found a purse containing a £5 note and six sovereigns: I gave them up: I asked him how he had got the note: he said he had given his lordship change for it a day or two before, and the rest of the money was his own: he had had it some time: he showed me his box containing his linen: I examined everything in it as I went along, but saw nothing tending to explain the case at all: I pulled the things out, and laid them on the bed, but I certainly did not examine so accurately as I did subsequently: I unfolded but did not shake them: I and Beresford merely unfolded the shirts on the bed: I examined Courvoisier's hands when I examined his room: I did not see the slightest scratch or mark: all the servants wished me to examine their trunks, and I did: I examined Courvoisier's trunk to see if there was any weapon, or any article with marks of blood on it: I satisfied myself on that

subject: I searched as carefully as I possibly could: I found two shirts, looked at them, and found them free from spots: I took out every article in the trunk: and I and Courvoisier replaced them: there was no speck of blood on anything I saw in the trunk: I saw no gloves in the shirts: I cannot say whether in unfolding the shirts a pair of gloves might have been there, and I did not see them—there might be: I did not find any weapon in the trunk.” Beresford, another policeman, said, “that he was present on that occasion: in a black trunk or box, between two waistcoats, about the centre of the box, he found a chisel; Courvoisier seeing it, but making no observation: we took the clothes off the bed *very carefully one by one*: I went to the trunk for the purpose of examining its contents: I took them out: I think I recollect two shirts: I opened them merely to look at the wristbands: I did not shake nor turn them out: I do not think I took all the articles quite out: for when I got just to the bottom, I believe I turned them from one end of the box to the other: *I examined sufficiently to convince myself that there was nothing suspicious to be found.*”

On the 8th of May, the day on which the reward was offered, the prisoner's box was again searched by two of the police, Shaw and Pearce; but, as far as concerned any discovery prejudicial to Courvoisier, in vain. The former said in his evidence at the trial, “our search was a minute one: we do not make a careless search when our object is to find anything suspicious: I paid every attention my duty required me to pay: we took all the things out of the box, one by one: we took each article up in our hands, and placed it on the bed: we left nothing behind that we considered suspicious: we took everything out and put it on the bed, so as to see that the box was empty and contained nothing more: I recollect seeing a shirt-front like this produced: I recollect seeing this: I had it in my hand: I recollect no [pocket] handkerchief.” These facts were all elicited by Mr Phillips

on cross-examination, the witness not having been examined to them in chief! Pearce said, “I turned the things out: I did not find anything that attracted my attention: I made the search with every degree of minuteness: I generally do so: I went to make a minute search: I saw some clean linen; looked at and examined it: I might have opened some, but do not recollect opening every one: there might have been some that I did not open.” Q. “Did you not turn out every individual article?” A. “I took them out with my hand: I think there were two clean shirts: I took them out: to the best of my belief I did not unfold them: I took out everything, and put them, and left them on the bed: if there had been any blood-stained articles, I think I should have seen them: I believe I should have seen them if they had been there.” Late in the evening of the same day, and, according to the evidence of one of the police, before he had heard of the reward, a strict search was made in Courvoisier's pantry; and several articles, afterwards proved to have belonged to Lord William Russell, were found secreted behind the skirting of the sink, and under the floor: viz., a purse, with five gold rings, and five gold coins; then a Waterloo medal, and a £10 note folded up. These were immediately taken upstairs, and shown to Courvoisier, by the policeman Pearce, who said, “I have found these things concealed in your pantry, behind the skirting-board;” to which he represented Courvoisier to have answered, “I know nothing about them: I am innocent: my conscience is clear: I never saw the medal before.” He was then taken down stairs, and shown where the articles had been found: on which he said again, “I am innocent: I know nothing about them.” Another policeman (Collier) said to him on the same occasion, “It is a most shocking thing;” to which Courvoisier answered, “It is! I am innocent of it; but it would not have looked so bad against me, had not the property been found in my pantry.” The police-

man said, "that it looked very suspicious:" to which Courvoisier replied, "I shall say nothing, at least until I hear that the whole truth is told." He was then taken up-stairs, and searched, but nothing suspicious was found on him: and that evening he was taken into strict custody, but not removed from the house. On the ensuing morning, a gold seal, a signet-ring, and a gold locket were found concealed in the scullery. On Sunday night Courvoisier was taken to gaol. On the ensuing Tuesday another discovery was made: a watch-key, and a watch, all of which had been the property of Lord William Russell, were found similarly concealed in the scullery; and, on the next day (Wednesday, the 13th) a sovereign was found under the floor of the pantry. On the evening of the 13th May, the prisoner's uncle, a respectable man, the butler of the late Sir George Beaumont, called at the house of Lord William Russell, at the request of his nephew, then, of course, in charge of the police, for some linen, a clean shirt and stockings. His request was not, however, complied with till the following morning, when Inspector Tedman, to whom the application had been made, went up with a brother policeman to the prisoner's box, the one which had been searched before: took out a shirt, and unfolded it, holding it up by the collar; and on shaking it, *there dropped out a pair of gloves slightly stained with blood!* They were white cotton gloves, such as servants wear when in attendance on their masters. He had unfolded this very shirt on the 6th, and had not discovered the gloves; and on the day of thus discovering them, he afterwards examined the prisoner's hands, but did not see the slightest mark or scratch. Shortly afterwards, on the same morning, two other policemen went up to the room where the gloves had been found; and, lying very near the top of the portmanteau, found two handkerchiefs, one cotton and one silk, marked "B. C." with spots or marks of blood on both, and a shirt-front. "We found them directly: no one

could search the portmanteau without seeing them, if they had any eyes: I should not think any person could fail to see the handkerchiefs when they looked into the portmanteau. * * * I was present a few days before when it was searched, and attended to the examination: I cannot swear that I noticed either of these things then: I did not find any shirt anywhere that the shirt-front would match: I found the shirt-front a little below the handkerchiefs: a torn shirt-front would attract attention, and attracted mine: I do not know how any one could miss seeing it, — I could not, I know: if a person took each article, one by one, out of the trunk, I do not think he could have missed seeing it, or the handkerchiefs either, if they had been there: I believe it was Shaw and Humphries who searched it with me [on the former occasion]: they searched more particularly than I did: I did not search the box minutely myself: they appeared to me to be minutely searching the box: I observed none of these things on that day." It was abundantly proved, that many of the police and others had access to the boxes and portmanteau where these gloves, handkerchiefs, and shirt-front were so strangely first omitted to be seen, and afterwards more strangely seen.—We may here inform the reader that shortly before Courvoisier was executed, he made a full confession (a portion of which we shall give hereafter) of all the circumstances attending the murder; and in that confession, he made the following distinct statement relating to these discoveries:—"The gloves were never placed in the shirt by me, or to my knowledge. When I left Mr Fector's, I gave all my white gloves to the coachman. The handkerchiefs that were found in my portmanteau were never put there by me. I know nothing whatever of the shirt-front."

Five or six public examinations at Bow Street preceded the final committal of Courvoisier to Newgate, on the 29th of May; and, notwithstanding the strength of the suspicions ex-

isting against him, the public mind was in a state of extreme disquietude and excitement, lest, on the one hand, an innocent man should be sacrificed, or, on the other, an atrociously guilty one should escape. On turning to the *Times*, we find almost daily comments on the alleged remissness of the police, and the doubtful nature of the case, even as it was progressively developed by each day's discoveries. It is also stated that Courvoisier, on being told that his pantry was about to be searched, exhibited much uneasiness; and on hearing of the discoveries which had been made both there and in the scullery, "turned as white as his shirt," and was even "taken suddenly ill." It was first intimated to him that he was in actual custody, as soon as the £10 bank-note had been found. "His agitation was extreme; but he persisted in declaring his innocence." When suddenly taken to Bow Street, at twelve o'clock at night on Sunday the 10th, he rose, dressed, and prepared himself, with alacrity, "making no other remark than a fervent declaration of his innocence." A day or two afterwards, we find that he "frequently expressed his opinion that he should be honourably acquitted, and told Sergeant Driscoll that when at liberty he should not forget him for all the civility he had shown him." On the ensuing day, we find him "not in the slightest degree depressed in spirits, and stoutly persisting in his entire innocence." After Sarah Manser and Mary Hannell had been examined before the magistrate at great length, Mr Flower, who conducted Courvoisier's defence, with a confident air assured the magistrate "that the prisoner was extremely anxious for the fullest possible inquiry to take place." A day or two afterwards, "the prisoner still persisted in protesting his entire innocence." On the 25th May, we learn that the public "felt the utmost possible anxiety to know if anything of a *decisively criminal* character had been discovered:" this being after the examination on the preceding day, on which we notice, as being present, Sir

George Beaumont, at whose expense, from a strong persuasion of the prisoner's innocence, his defence was afterwards conducted. On the 29th May, his last examination took place, and all the depositions were read over in his presence. "He entered the dock with a light step and cheerful countenance; and it may be added that his appearance indicated increased confidence as the protracted evidence drew to a close." On that day he was committed to Newgate to take his trial for the murder. As an exponent of the state of public feeling at that time on the subject of Courvoisier's guilt, we may again allude to the fact that the late Sir George Beaumont, as we now learn from his private solicitor,* generously pitying a foreigner exposed to mortal, and, as Sir George conceived it, unjust peril, supplied the funds for defending the prisoner on his trial at the Old Bailey.

That trial commenced on Thursday, the 18th of June 1840, before the late Chief-Justice Tindal, Mr Baron Parke sitting beside him. The counsel for the prosecution were the late Mr Adolphus, Mr Bodkin, and Mr Chambers; those for the prisoner, Mr Phillips and Mr Clarkson. The trial lasted three days, and no fewer than thirty-five witnesses were examined. The evidence for the prosecution had been prepared with care and skill: and it may be important to apprise non-professional critics, that the prisoner's counsel was, as is always the case, thoroughly informed of the evidence which had been given by all those witnesses who had been examined in the previous stages of the inquiry; whereby any discrepancies between their former testimony and that given at the trial would be amply available on behalf of the prisoner. This will explain many questions put by the prisoner's counsel in cross-examination, which might otherwise appear unaccountable, and even unjustifiable. The prisoner, being an alien, was of course entitled to be tried by a jury composed equally of

* *Correspondence, &c.*, pp. 27, 28. Letter of Christopher Hodgson, Esq.

foreigners and Englishmen. On being asked, he said that he preferred being tried by a jury of Englishmen. Mr Adolphus opened the case to the jury, in a lengthened and elaborate address, characterised by his usual ability, and presenting several remarkable features, naturally challenging severe observations on the part of the prisoner's counsel. We shall content ourselves, for several reasons, with the following account of the general character of his address, given in the "Annual Register:"*—"The report of his speech occupies four or five columns of the *Chronicle's* broad sheet" [and three and a half of the columns in the *Times*]. "He went into a minute, elaborate, and very able statement of all the circumstances connected with the murder, presenting a mass of circumstantial evidence against the prisoner—*pausing frequently to remove any impression favourable to him, and suggesting a guilty motive for all that he said and did.*" This severe observation, we are compelled to own, appears to us justified by the report of the speech as given in the *Times*. Mr Adolphus admitted the case to be one entirely of circumstantial evidence, and repeatedly pressed on the jury the weight which was due to such evidence—doubtless apprehensive of the effect which might be produced by his eloquent and ingenious opponent. One or two passages of this speech throw so much light on that of Mr Phillips, that it is necessary to present them to the reader, as given in the *Times*—begging the non-professional one to bear in mind that the counsel for the prosecution was also aware of all the evidence which had been given in the previous stages of the case, and the use which might be made of it by his opponent.

"Having discovered these things," said Mr Adolphus in the course of his narrative, "the police went with the prisoner up to his own bedroom, and searched his box, but found nothing in it material to this inquiry. *He saw that this made some impression on the jury; and he would only observe, that*

if the prisoner were guilty, and possessed of even moderate cunning, he would hardly put any of the stolen articles into his box, which he must be sure would be subjected to investigation. His box was searched; and he, Mr Adolphus, *did not rely on anything found in that box on any occasion.* He felt that he was speaking to men who heard and read what was published to the world. Something might have transpired *with respect to linen found in the prisoner's box*, marked in a particular way; but he, Mr A., *attributed no weight to it; and he repeated that nothing arose, in the present case, from anything discovered in the prisoner's box.*"

When Mr Adolphus made these observations, he was aware of the facts already laid before the reader; and what the witnesses were about to depose to before the jury respecting the gloves, handkerchiefs, and shirt-front. He proceeded—

"*Englishmen* were not in the habit of committing murder as a prelude to plunder; *with foreigners it was different!* for they imagined that if they extinguished the life of the person they robbed, there would exist no direct testimony against them!"

He then proceeded to answer, by anticipation, certain topics which he supposed would be urged on behalf of the prisoner.

"Another mode of [impeaching?] the evidence he foresaw, *from the newspapers*, was this—that one of the witnesses, Sarah Manser, was unworthy of credit. It was not in his power to call witnesses to set up her credit; but in answer to the general declamation which might be heard against them, he would say this, that her character was unblemished in every particular. * * * If it *should* be said that she was unworthy of credit, he hoped the jury would not consider her testimony prejudiced by any mere declamation, or the use of hard terms and bad names."

"*A similar attack might be made on the police.* It might be said that their exertions had been stimulated by a very large reward," &c.

* Vol. lxxxi. p. 230, A.D. 1840.

"The illustrious family for whom he appeared had no desire to hunt a helpless foreigner into the jaws of death, as if actuated by feelings of personal revenge. The Bedford family prosecuted here as the mere petitioners for public justice, not to gratify any feeling of private revenge."

The effect which such a speech as that made by Mr Adolphus, on such an occasion, was likely to produce on the prisoner's counsel, it is not difficult to imagine.

The first witness called was Sarah Manser, the housemaid, whose examination occupies seven pages and a quarter of the closely-printed "Sessions Minutes." Her cross-examination by Mr Phillips occupies five pages, and appears to have been close and severe, but in no degree, in our opinion, unjustifiably so. He endeavoured to establish discrepancies between the evidence she had given on that occasion, and on her previous examinations at the police-office. She admitted that she had several times before spoken of having seen Courvoisier "looking not only into *one* room, but every room," without mentioning, as she had that day done, that "she saw him *looking after his lordship's property*." She was also pressed with having said before the coroner that she "saw his lordship *murdered on the bed*," instead of merely seeing "*some blood on the pillow*." She was asked why she had said "Let us go and see *where his lordship is*?" instead of "Let us go and *tell his lordship the house is robbed*?" "Q. Did you think anything was the matter with my lord, then?" "A. I did not know what to think: he was unprotected, and nobody went to see: I found my fellow-servants safe. * * * I expected to find him in his bedroom: I did not know whether he was there or not: I had been in every room but the kitchen. I had not been into his bedroom: I did not know where he was: I did not expect any mischief was done to him at that time: I was anxious to see where he was: I had no doubt where he was." Her

testimony was not really shaken; but Mr Phillips elicited the fact, that on the glass door leading into the back area, "through which she had gone scores of hundreds of times," *she had observed no marks before the police came into the house*; that she had never noticed any, nor heard of any experiment made on it *since* the police entered. She also stated that a ladder, found standing in the back yard, by which any one could have got over into the adjoining area, had been taken there by Courvoisier on the day of the murder, by her desire, as it was in her way while cleaning the passage. The last of the eight witnesses examined on that day, was a policeman named Baldwin, whose testimony was utterly destroyed by the cross-examination of Mr Phillips; and Chief-Justice Tindal told the jury to place no reliance on it whatever! Grosser equivocation on the subject, in particular of his knowledge of the reward which had been offered, we have seldom seen.

Up to this time there was but too much probability of the difficulties of the case proving too serious to be successfully encountered by justice. The prosecutors were, however, that afternoon placed unexpectedly in possession of an item of evidence, serious, indeed, for the prisoner and his defenders, viz., the discovery of the missing plate, and of evidence that it had been left by the prisoner at the place where it was found, about a week, perhaps only a very few days, *before* the committing of the murder. The parcel contained silver spoons, forks, a pair of gold auricles—all unquestionably the property of the unfortunate nobleman; and the only question remaining was, whether Courvoisier was the person who had so left it. If he were, it would of course fearfully increase the *probabilities* that it must have been he who subsequently committed the murder, and with the object of plunder. On the ensuing morning, the person who had made this discovery (Mrs Piolaine, the wife of a Frenchman who kept a place of en-

tainment called L'Hôtel de Dieppe, in Leicester Place, Leicester Square), was shown a number of prisoners in the prison-yard, one of whom was Courvoisier, whom she instantly recognised as the person who had left the plate with her, and also had formerly lived in her employ. Courvoisier also suddenly recognised her, and with dismay. The immediate effect of his panic was the astounding confession of his guilt to his counsel, at the bar of the court, a few minutes afterwards, coupled with his desire, nevertheless, to be defended to the utmost. From this last circumstance, we infer that the object of the guilty wretch, in making the confession, was simply to prepare his counsel against the forthcoming evidence. Mr Phillips, who declares* that "up to that morning he and Mr Clarkson believed most firmly in the prisoner's innocence," (and his statement is confirmed by Mr Clarkson),† has given a brief but graphic account of the effect of this communication. He stood, as well he might, awhile aghast; and on recovering from the shock, said, "Of course, then, you are going to plead guilty?" "No, sir; I expect you to defend me to the utmost;" on which Mr Phillips and Mr Clarkson returned to their seats. "My position," says Mr Phillips,‡ with perfect truth, "at this moment, was, I believe, without a parallel in the annals of the profession. I at once came to the resolution of abandoning the case, and so I told my colleague." Had Mr Phillips yielded to this impulse, in the horror of the moment, he would have abandoned his duty; and we have his own authority for saying that such is now his own opinion. "I am satisfied that my original impression was erroneous. I had no right to throw up my brief, and turn traitor to the wretch—wretch though he was—who had confided to me."§ It was the influence of his zealous and able colleague, Mr Clarkson, which saved him from committing this grievous error, and overcame his

determination by suggesting that they should take the opinion of the eminent judge, Mr Baron Parke, who sat during the trial beside the Chief-Justice, but did not share in trying the cause. Mr Baron Parke acted with that kindness and discretion, in the terrible dilemma so unexpectedly brought under his notice, which the judges almost always exhibit in dealing with the Bar. He "requested to know distinctly whether the prisoner insisted on my defending him; and on hearing that he did, said, I was bound to do so, and to use all FAIR ARGUMENTS ARISING ON THE EVIDENCE."¶ How promptly, justly, and felicitously was here laid down the true rule of advocacy applicable to the awful situation, for awful it was, in which Mr Phillips was placed, through no fault of his own! "It was not till after eight hours of my public exertions before the jury that the prisoner confessed; and to have abandoned him then would have been virtually surrendering him to death."¶ That in this he was right, no one, whose opinion is worth having, will deny; and even the *Examiner* does not presume to question that right. "I therefore retained the brief," continues Mr Phillips; "and I contend for it that every argument I used was 'a fair commentary on the evidence,' though, undoubtedly, as strong as I could make it."*** This is bold and decisive; and the question is, whether the facts, as far as now ascertainable, sustain Mr Phillips' affirmation, or the counter-affirmation of his accusers; and on them, of course, lies the burden of proof.

The first witness called into Court on the morning of this blighting confession, almost immediately after it had been communicated to the bewildered advocate, and while he was fresh from his interview with Mr Baron Parke, was a policeman, the first of seven, examined during the day. It was Inspector Tedman, who gave very strong and apparently conclusive evidence against the prisoner. How every answer must have told on his advocates, it is easy to imagine. || Ibid. p. 12. ¶ Ibid. p. 16. *** Ibid.

* Correspondence, p. 11.

† Ibid. p. 27. Appendix. ‡ Ibid. p. 11.

§ Ibid. p. 15.

His evidence occupies nearly six pages. The cross-examination by his then crest-fallen questioner, scarcely exceeds half a page! and is confined to a few calm questions, and limited to two topics—the blood-stained linen, its non-discovery on the 6th, its discovery on the 14th of May; and the marks on the back area door. His answers on the former point are incorporated in the foregoing narrative; and he added that “he found no weapons in the prisoner’s trunk on the 6th of May.” As to the latter point, he made the following frank statement:—“*There was no mark on the area door, with the glass to it, on the 6th of May: I examined it for the purpose of seeing whether there were any marks: there are now a number of marks on that very door, and also on the posts of that door, which had none on the 6th: they appear to have been made with some kind of instrument: the prisoner was under the inspection of the police from the very time of our entering the house: Sergeant Pullen was appointed over the prisoner.*” On re-examination, he said, “I was not present when the marks were made on the door: I did not see who made them, knew nothing of any being made, and ordered none to be made.” “*Mr Adolphus: There were none on the 6th, but there were afterwards?* A. Yes; they are there now.” This was the last answer given by the witness; and when Mr Phillips came to comment on the evidence of this critical witness, he concluded, according to the report in the *Times*, by saying of him that he was “an officer who had given his evidence most fairly.” The next policeman was William Rose, to whom Mr Clarkson put one question only. The next policeman was Henry Beresford, who gave important evidence, and at considerable length; but Mr Phillips cross-examined very briefly as to the examination of the prisoner’s trunk, and the marks on the area door. The next policeman was Nicholas Pearce. He also gave important evidence, in considerable detail, and was cross-examined severely and ably, but by Mr Clarkson, as to the

marks on the door, the discoveries in the prisoner’s trunk, and as to the expressions he had used to Courvoisier, on suddenly exhibiting to him the articles which had been discovered in the pantry and scullery. The witness had stated, on his examination-in-chief, that he said to the prisoner, “I have found these things concealed in your pantry.” Mr Clarkson extorted from him an admission, however, that he had added the words, “Can you now look me in the face?” and severely questioned him as to his object in making this suppression; and in having put the question to the prisoner as to whether he had not done it to extort a confession, and under the expectation of obtaining part of the reward payable on conviction—an expectation which the witness avowed, when pressed by Mr Clarkson. The next policeman was George Collier, who also gave cogent evidence, especially as to finding the blood-spotted handkerchiefs and the shirt-front in the trunk, which he had not found on a previous search, though he admitted that “no one, if they had any eyes, could have searched the portmanteau without seeing them!” Mr Phillips cross-examined him as to one point only—the searches in the prisoner’s trunk; and his answers were somewhat confused and unsatisfactory. He admitted that “anybody might have had access to the room in which the prisoner’s box was, for what he (the witness) knew.” The next policeman was Frederick Shaw, who spoke, in his examination-in-chief, solely to his discovering the gold seal, seal-ring, and gold locket in the pantry and scullery. Mr Phillips cross-examined him only as to the searches into the prisoner’s trunk, eliciting highly important evidence as to the non-discovery of any linen or other articles spotted with blood, on the 8th of May, in company with Pearce. The last policeman was Paul Cronin, who deposed to the discovery of the property secreted in the pantry and scullery, and neither Mr Phillips nor Mr Clarkson examined him. The next ten witnesses were not cross-examined at all by

either Mr Phillips or Mr Clarkson, with the exception of a single question by the latter, immaterial for the present purpose, though both the Court and jury, ignorant, be it borne in mind, of the confession, put questions to several of the witnesses. The next witness was Charlotte Piolaine, who spoke to the prisoner as the person who had left with her the parcel containing the plate and other articles, and explained how she came to make the discovery, and only so lately as after the trial had commenced. Mr Phillips cross-examined this important witness, but not at great length, eliciting that their hotel "was not kept exclusively for guests"—that there was a billiard-table there, at which "anybody could go in and play that liked; any stranger might go in and play;" but she denied that it was a gambling-house, or that the police or any one had ever taken out any gang of suspected persons. "She *thought* she could swear that, as she had never heard any noise, and was never down in the billiard-room. She was not aware that there were a great many gambling-houses in Leicester Place—not that she was aware of: she had never inquired much whether there were any there: she had lived there two years next September." On being asked, she said "she had heard of the murder the day after it was committed, and was much shocked, but had not heard continual conversations during the ensuing five weeks—never among the people who came to her house: had never heard her husband speak of it, to her knowledge: had never seen posted up in large letters 'The murder of Lord William Russell:' and she had never spoken about the murder to anybody, being generally occupied with her own affairs." The remaining eight witnesses were scarcely cross-examined at all. Mr Phillips did so only twice, and in a question or two. So much for his cross-examination of the witnesses for the prosecution, after he had become unexpectedly and unwillingly the depository of the prisoner's confession. From that moment his fire slackened, and was directed thence-

forth to only two or three points, and these, unless we are grievously mistaken, really vulnerable portions of the case, and justifying, in our opinion, after much consideration of the facts elicited on cross-examination, the gravest suspicions.

On the ensuing morning, after a sculptor had been called to speak to the accuracy of the model of Lord William Russell's house, which had lain before the jury during the trial, and Sarah Manser and Inspector Tedman had been recalled by the prosecutor, who put only one apparently immaterial question to each, Mr Phillips rose to address the jury; and if he did not do so under circumstances entitling him to the sympathy of all who knew and could appreciate the misery of his position,—with the ominously watchful eye and ear of Mr Baron Parke being upon him during every syllable of his speech, and a consciousness that the fatal secret of the confession would in a few hours' time be universally known,—no advocate ever was, or can be, entitled to such sympathy. We think it proper to give the opening paragraphs of his address, *verbatim*, from the *Times*, which is also given almost *totidem verbis* in the *Annual Register*.*

"Mr Phillips addressed the jury for the prisoner:—

"He supposed, he need hardly say, that after twenty years' experience in courts of criminal justice, he had seldom risen to address a jury under more painful and more anxious sensations. There were certain circumstances in this case, revealed before the magistrates, which had caused him much anxiety; and he left them to conjecture how much that anxiety must be increased by the production without any notice whatever, of evidence by which the life of the unhappy man at the bar might be placed in the greatest peril. He said 'might,' because he did not consider even that additional proof, for reasons which he should state to them, by any means *conclusive*. He felt that, in the situation in which he stood, he should have

* Vol. lxxii. pp. 233-236.

their kindest sympathies; he should also have the sympathy of his associates. They were embarked together in a common cause; they had incurred together a common responsibility; the life of a fellow-creature was intrusted to their keeping; and so surely as they dealt with that life *unjustly*, so surely would they have to answer for it to the God who made them.

"He had not merely the facts of the case to deal with, but the odious prejudices which the preliminary investigations must have engendered, filled him with apprehension.

"The horrid nature of the crime itself, the rank of the deceased, the numerous connections mourning their bereavement, the opinions promulgated before the prisoner could be heard, the fact that his case had not been left to the ordinary instruments of justice, but that speculation had been stimulated by the offer of a Government reward,—as if the grave knew any aristocracy,—these things did fill him with apprehension. And when he looked around him on that crowded court, and saw the intensity of the public gaze, and almost heard the throb of popular indignation; and when he turned him to the dock, where the wretched object of this outburst stood,—alone amid this multitude, far from his native land, far from the friends that loved, and the associates that in his hour of danger would have crowded around him,—a poor, solitary, isolated, helpless foreigner,—he did own that he should feel his spirits fainting fast within him, were it not for the anchor by which he held, an anchor that was centred in the breasts of the jury. He relied upon their integrity, upon their sense of justice; he participated in that generous reliance which the prisoner showed, when he refused all foreign interference, and trusted his life to a jury of Englishmen.

"He thought that the prisoner was right; he had no fear in appealing to such a tribunal. He knew that the case, whatever it was, would by such a tribunal be fairly, fully, impartially heard, and justly decided. He should

proceed, then, to consider the most extraordinary and unheard-of circumstances of this case; and, having done so, he should submit that in such a case, wrapped up in clouds, in mystery, and darkness, there was not only nothing upon which they could safely convict the prisoner, but that here and there probabilities started up which might make them suspect that he had been made the victim of an unjust and depraved conspiracy!"

What was the object of that probable conspiracy, thus guardedly suggested, and what were the means by which it had been sought to obtain the object, must long ago have occurred to any attentive reader of the foregoing pages.

We had marked many passages in the powerful address of Mr Phillips, for quotation, as specimens of what may be admirably accomplished by a skilful advocate, in even the most disheartening and desperate cases. Want of space, however, and a desire to adhere to the real points of the present controversy, compel us to be content with merely indicating the course of his topics. He proceeded to say that "he had much to complain of in the opening address of Mr Adolphus," particularly in his attempting to answer a prisoner's defence, by anticipation of what it might possibly turn out to be. Then Mr Adolphus had said, "the man is a foreigner; and foreigners always murder when they rob;" a proposition which he scouted in terms of vigorous and indignant eloquence. Then as to the possible motive for the crime: "it was not," said Mr Adolphus, "necessary for a man to have a motive to commit crime." The prosecutor had been obliged to say this, because he acknowledged he could assign no motive for Courvoisier's murder of his noble, kind, and confiding master. Had it been avarice, he had many ways of obtaining his wishes easily, without resorting to murder. "This was not a case in which they had clear proofs before them; it was one of circumstances only, as the prosecutor had himself told them: and, there-

fore, every minute observation with which it might be his painful duty to trouble them, would, he was sure, be taken into consideration. It was not his case, it was their own case. His duty performed, not upon his feeble breath, thank God, would the irrevocable doom depend. Upon them it would; and, therefore, when the arduous task committed to himself and his friends was performed, their consciences would be clear." He proceeded to remark on the proved and admitted absence of assignable motive on the part of the prisoner, for the murder; and then urged an obviously important topic of his defence, of any defence, especially in cases of mere circumstantial evidence, namely, that it lay on the prosecutor to make out clearly a case of guilt against the prisoner, whose innocence is of course presumed by the law. "The counsel for the prosecution had undertaken to prove that the crime had been committed by the prisoner. He believed it would be laid down by the learned Judge, that it was the duty of the prosecutor to bring home to the prisoner, without any reasonable doubt whatever, the commission of this offence. It was not his (Mr Phillips') business to prove who did it; that was the task *they* had undertaken. Unless that were proved, he would beseech the jury to be cautious how they imbrued their hands in this man's blood. The omniscient God alone knew who did this crime.* He was not called on to rend asunder the dark mantle of the night, and throw light on this deed of darkness. They were bound to show the prisoner's guilt,—not by inference, by reasonings, by that subtle and refined ingenuity which he was shocked to hear exercised in the opening address of his friend, but to prove it by downright, clear, open, palpable, demonstration. How did they do this? What said Mr Adolphus, AND HIS WITNESS, SARAH MANSER? AND HERE HE WOULD BEG THE JURY NOT TO SUPPOSE,

* The reader will continue to bear in mind that we are quoting from the report in the *Times*; and as to this sentence some observations will be found hereafter (*post*, p. 260).

FOR A MOMENT, IN THE COURSE OF THE NARRATIVE *with which he must trouble them, that he meant to cast the crime upon EITHER OF THE FEMALE SERVANTS.* It was not at all necessary to his case to do so. He wished not to asperse them. [God forbid that any breath of his should send tainted into the world persons perhaps depending for their subsistence upon their character. It was not his duty, nor his interest, nor his policy to do so.]"† The *Examiner*, in originally stating this part of its charge against Mr Phillips; on the 27th June 1840, quoted, and very conspicuously, *only the last two sentences*, above included in brackets; *taking no notice whatever of the far more important sentences immediately preceding them!*

Mr Phillips, however, having thus guarded the jury at the outset against entertaining erroneous notions as to his intentions with reference to the women servants, thus proceeded;—and to the whole of this paragraph, particularly the portions in small capitals, we would direct the special attention of our readers—"The first imputation on the prisoner by Mr Adolphus, was his AGITATION. Let them try that by the test of their own hearts and consciences. The prisoner had seen his master retire to his peaceful bed, and was alarmed in the morning by the housemaid, who was up before him, with a cry of robbery, and some dark mysterious suggestion of murder. 'Let us go,' said she, 'and see where my lord is.' He did confess that that expression struck him as extraordinary. If she had said, 'let us go and tell my lord *that the house is plundered*,' that would have

† The *Morning Chronicle* report thus commences this important paragraph:—"In the first place, says my friend, Mr Adolphus, and says his witness, Sarah Manser,—and here I beg to do an ACT OF JUSTICE, and to assure you that I do not for a moment," &c., "that this crime may have been committed by the female servants." The *Herald*:—"But let me, do *myself* justice, and OTHERS JUSTICE, by now stating," &c. The *Post*:—"Let me do *myself* justice, and OTHERS JUSTICE, by begging you not to suppose that I am *in the least degree* seeking to cast the crime upon ANY OF THE WITNESSES."

been natural; but why should she suspect that aught had happened to his lordship? She saw her fellow-servants safe, no taint of blood about the house, and where did she expect to find her master? why, in his bedroom to be sure. What was there to lead to a suspicion that he was hurt? Courvoisier was safe, the cook was safe, and why should she suspect that her master was not safe too? If he had heard the character of that nobleman right, there was never a man who breathed who had less reason to suspect or dread a foe. But Courvoisier did as he was desired. He and Sarah Manser went to the bedroom. The prisoner walked up to the window, as he was in the habit of doing; he opened a shutter; and then the female servant saw a speck of blood upon the pillow, and ran screaming out of the room. He had put a question to the witness respecting the account she had given before the Coroner. The depositions taken before the Coroner were then before the learned Judges; and, perhaps, they would consider it their bounden duty to tell the jury, whether that woman swore before the Coroner as she did before the Court.* His conscience was clear. He had discharged his duty by throwing out that suggestion. The question he had put to the witness was this: 'Upon the oath you have taken, did you not tell the Coroner that you saw, instead of "some blood on the pillow," "his lordship murdered on the bed?"' That was matter for the jury to consider. He should now pass on. The window was opened, the daylight let in on the dreadful spectacle, and could they expect Courvoisier, or any

* It may be necessary to apprise the non-professional reader of the reason why Mr Phillips did not at once settle the point, that there was a variance between an answer given by the witness at the trial, and one given when she was examined before the Coroner. If he had done so, he would have made these depositions evidence, and so have entitled the counsel for the prosecution to a reply. Whether or not, in the present instance, Mr Phillips was likely to allow a speech in reply from Mr Adolphus, after such an opening as his, it is for the experienced reader to say.

human being who did not disguise within a human shape the heart of a wild beast, to remain unmoved at the exhibition? To see rank and age, a nobleman, seventy-three years old, weltering in his blood; how did the jury think that *they* could have borne the spectacle? Mr Adolphus said, they must show no agitation at it! that if they did, it must be taken as a proof of guilt! What would have been said if Courvoisier had remained calm, and looked on unmoved? Would they not have thought, and thought justly, that the man who was unmoved, who did not shudder with agitation at such a sight—was himself capable of committing the deed? But when Mr Adolphus called on them to mark the agitation of the prisoner, as a proof of guilt, what became of the women, who showed the very same feelings? HE THOUGHT THE BETTER OF THESE WOMEN FOR DOING SO: GOD FORBID HE SHOULD INSINUATE IT WAS A PROOF OF THEIR GUILT: IT WOULD APPEAR TO HIM, ON THE CONTRARY, TO BE A PROOF OF THEIR INNOCENCE! He wished his learned friend had been where he, Mr Phillips, had accidentally happened to be,—in Hyde Park, some days since, when the murderous attack on the Queen was made! He wished his friend could have seen the emotion of the bystanders when it became known; how the stoutest man stood appalled; and every face betrayed the most painful agitation. If THAT were a proof of guilt, there was not a man in the Park who should not have been considered the murderer. Agitation, indeed!" The *Morning Herald* thus reports the passage above quoted in small capitals from the *Times*:—"But Mr Adolphus talks of the prisoner's agitation being a proof of guilt. Let me remind him that the female servants, his own witnesses, were in the same state of agitation, and I THINK THE BETTER OF THEM FOR IT: for I hold, that in such a case, agitation, so far from being a proof of guilt, IS A PROOF OF INNOCENCE." The *Morning Chronicle* gives it thus:—"But when Mr Adolphus calls on you to say that the prisoner's agitation

was a proof of his guilt, what is to become of the women? They showed similar agitation. Mr Adolphus says, agitation on the part of the man was a proof of his guilt. I SAY THAT AGITATION, IN THEM, WAS A PROOF OF THEIR INNOCENCE; AND THAT IS THE DIFFERENCE BETWEEN US!" The passages above-quoted from the *Times*, in small capitals, have never been cited by the *Examiner* in any of its articles during the last ten years! as far as we have been able to discover (certainly not in those placed at the head of this article), though the attention of the writer of them was of course directed to the report in the *Times*, which, doubtless, he has carefully and repeatedly studied, to discover whether it really bore out the assertion, that Mr Phillips deliberately imputed to the women servants, or insinuated against them the imputation, that they had been guilty of the crime of murder! And the only proof which the *Examiner* has to offer of so horrible an imputation, is contained in the foregoing brief extract, beginning, "the prisoner had seen his master retire to his peaceful bed," and ending, "why should she suspect that her master was not safe too?"

Pursuing the course of Mr Phillips' defence, there follows a series of acute and striking comments on various points of the evidence which had been pressed by Mr Adolphus strongly against the prisoner. One of them related to the ineffectual search by Inspector Tedman of the prisoner's box on the 6th of May; and Mr Phillips remarked, with equal force and justice, on the probability that the gloves, handkerchiefs, and shirt-front had found their way fraudulently into the prisoner's trunk,—which, instead of having been immediately sealed up and secured, out of justice to the prisoner and the public, after Inspector Tedman's search on the 6th of May had satisfied him that there was nothing in it to criminate the prisoner, had "remained open and accessible to the women servants and the whole gang of policemen," down to the day when the articles in question were so

strangely discovered. "*Who put them there*, between the 6th and 14th of May? His learned friend had demanded, Who murdered Lord W. Russell? *He* (Mr Phillips) was not bound to show that; but he had a right to know who put those bloody gloves in the prisoner's trunk, between the 6th and 14th of May, after the first minute examination by Inspector Tedman, and when the prisoner had been three days in gaol! * Had there not been *practice* here? 'Thus bad begins; but worse remains behind.' This man, it was evidently determined, should be made the victim of some foul contrivance. Then, as to the handkerchiefs, shirt-fronts, and frill: who put these into the trunk, and for what purpose? They were not there on the 6th of May. It was clear Courvoisier had not put them there; it was physically impossible: he was in his dungeon at the time, three miles off. Some villains must have been at work here, to provide proofs of guilt against the prisoner, and endeavour to make the jury instrumental in rendering him the victim, not of his own guilt, but their own machinations. He was not wrong in saying that there existed a strong suspicion, if not actual proof, that the trunk had been practised on." Mr Phillips then proceeded to comment severely on the conduct of the policeman Pearce, who had suppressed a portion of his remark to the prisoner ("Dare you look me in the face?") yet said he had not intended to "intimidate." Mr Phillips charged him with an attempt to extort a confession, and added, "yet the fellow who did all this, told the jury he expected to share in the plunder,—the £450 reward,—which was to be divided over the coffin of Courvoisier. He had hoped the days of blood-money were past. These rewards might be offered

* In the report of the *Morning Herald*, as cited by the *Examiner* on the 8th December 1849, there appears, in this part of the speech, the following bold avowal by Mr Phillips, in the presence of the judge and jury:—"I say, freely and fearlessly, that the articles were placed there by some of the police, for reasons best known to themselves!"

by Government from the purest of motives. They might induce men to hunt out evidence, but their effect was, also, to make them invent, fabricate, colour, distort, and exaggerate it, to attain the end they had in view." Then came Baldwin, whom Mr Phillips accused of "shuffling, equivocation, and lying on his oath;" and, as we have already intimated, the Judge agreed with Mr Phillips, and directed the jury to dismiss from their minds the evidence of this man, as worthless and dangerous! Mr Phillips proceeded to explain several other portions of the evidence, as being of an inconclusive character, and even consistent with the prisoner's innocence. He observed on the absence of the slightest wound or scratch on the prisoner's person, or stain of blood on any portion of his clothes; that it was absurd to suppose he would, if guilty of the murder, have placed gloves, handkerchiefs, &c., marked with blood, where they were certain of being instantly discovered; and the same observation he applied to the articles which had been found in the pantry and scullery. He also asked how the cook's silver thimble, an utterly worthless article, came to be in the hall, among the other articles found there; and called attention to the undoubtedly remarkable circumstance, that so much could have been done, door-breaking and all, during the night, by Courvoisier, who slept in a room immediately adjoining that of the women servants, without having once disturbed them. He pointed out the strange position, and the contradictory character of the evidence, as to the marks said to have been found on the area door. On coming to the startling addition to the case for the prosecution, afforded by the evidence of Mrs Piolaine, he complained loudly that he had not been apprised of it, and of the name of the witness, (as he certainly might have been), over-night. "A night, at least, should have been given, to allow inquiries to be made into the character of the witnesses. This new evidence had been sprung on him like a mine. He knew nothing about Mrs Piolaine;

how should he? The prosecution had taken care that he should know nothing about her. * * * He hoped the jury knew something of Leicester Place. If they did, they knew the character of this hotel, with a billiard-room attached to it, where, unlike at a respectable hotel, any stranger, not being a guest, might enter and gamble. This was the evidence of Mrs Piolaine, who though," &c.; and he went on to remark justifiably on the air of improbability worn by a portion of her evidence, and the possibility of her being mistaken as to the identity of the prisoner. "But supposing all this was admitted (and he was sure that the jury, could they find their way out of this case, consistently with the ends of justice, without shedding the prisoner's blood, would be glad to do so), was this evidence conclusive as to the murder? On this question they would have the valuable opinion of his lordship; yet he might say of this evidence, that though, if true, it might be conclusive of the robbery, yet it was by no means conclusive of the murder. And with respect to the commission of the murder, the jury might have a strong suspicion, or even a moral conviction; but it was not on a strong suspicion, or a moral conviction, that a man was to be declared guilty of murder. If, notwithstanding that suspicion, they felt bound to acquit the prisoner, he was still answerable for the robbery, if guilty; and even supposing him guilty of the murder, which, indeed, was known to Almighty God alone, and of which, for the sake of his eternal soul, he (Mr Phillips) hoped the prisoner was innocent, it was better far that in the dreadful solitude of exile he should, though not in the sight of man, but before the presence of God atone, by a lingering repentance, for the deed, than that he should now be sent, in the dawning of his manhood, to an ignominious death, in a case where the truth was not clear. And having now travelled through this case of mystery and darkness, his anxious task was done; that of the jury was about to begin: might God direct their judg-

ment! * * * His had been a painful and an awful task; but still more awful was their responsibility. To violate the living temple which the Lord had made, to quench the fire that His breath had given, was an awful and tremendous responsibility. The word once gone forth, was irrevocable. Speak not that word lightly. Speak it not on suspicion, however strong; on moral conviction, however cogent; on inference, or anything but a clear, irresistible, bright, noonday certainty.

* * * IF THEY PRONOUNCED THE WORD LIGHTLY, its memory would never die within them."—And would it? These words were addressed, by one who was, as will be admitted, bound to act as though he were not the depository of the fatal secret confided to him, to twelve men who were, as the Chief-Justice almost immediately afterwards in impressive terms reminded them, sworn to decide ACCORDING TO THE EVIDENCE. "They sate in that box under the solemn sanction of an oath, and were bound by that oath to deliver their verdict according to the evidence laid before them; they were bound to decide upon that evidence and upon that evidence alone, so that, in coming to their verdict, their understandings and consciences should agree." If the jury should pronounce their dread verdict irrespectively of the evidence, that is, "lightly," they would have unquestionably violated their oaths, and that, too, in the case where the life of a fellow-creature was at stake. We have omitted, equally from want of space in this protracted article, and as needless to our present purpose, several passages of powerful rhetoric, ably enforcing the appeal which appears above.

Such was the defence of Mr Phillips, on certain isolated portions of which, alone, it has been sought to support the gross charge alleged against him.

The summing up of the Chief-Justice, which lasted for three hours and a half, was characterised by that rigorous impartiality and clearness for which he was so pre-eminently distinguished. So long and elaborate a summing up alone amply evidenced

the real doubt which he deemed to surround the proved facts of the case, and the necessity which existed for a careful and unbiassed consideration of them. He put it prominently to the jury, whether the murder and robbery were perpetrated by different persons, on the same night, or by the same person; and whether the marks of burglary and robbery exhibited within the house, and on the back door, were genuine or spurious? Were the articles of property so disposed within the house, and the marks so made on the door, to divert the attention of the officers of justice, in order that the guilty parties might escape? If thieves had entered to plunder, would they have left behind property so easily disposable about their persons? He advised the jury "by no means to rely on the prisoner's expressions when first met with in the morning, or his agitation, as a mark of guilt," but to act upon their oaths as to proved facts. He regarded the discrepancies between the evidence of the two women servants, and the suggested variance of expression attributed to the housemaid on the occasion of her first entering Lord William Russell's bedroom, as immaterial. "It was stated in the course of the trial, that the words of Sarah Manser, 'Let us go and see where his lordship is,' were 'rather extraordinary.' But in looking at expressions made use of by parties in a state of anxiety and alarm, the jury would not have to confine the words to their strict interpretation." "Nor was much weight to be attached to the language attributed to the prisoner, about 'Old Billy being a rum old chap,' &c.; it was little more than the kitchen gossip of servants about their masters. The discrepancy imputed to the statement of Sarah Manser, between 'seeing' blood on the pillow, and 'my lord murdered in the bed,' was not to be strained too far;" for, after all, "it really appeared a trivial one, and not to amount to a contradiction;" and he thought that Sarah Manser's testimony ought to be believed. "With respect to the question which had been put to the prisoner

by the inspector, there could be no objection to his doing so; but if it had been for the purpose of entrapping him into a confession which might be used in evidence against him, it was most unfair. If the words, 'Dare you look me in the face?' were used with an honest intention, the officer was not to blame." As to the gloves and handkerchiefs, "some observations had been made about finding the gloves and handkerchiefs secreted in the prisoner's portmanteau; and it was stated that they must have been placed there to bring the prisoner within the consequence of a verdict of guilty. The jury would consider whether, in the previous search, when all the shirts were taken out and placed on the bed unfolded, the gloves and handkerchiefs could have escaped notice; and whether any one could be capable of making up the chain of circumstances, in order to convict the prisoner at the bar. They would also consider whether, if this had been intended, more decisive steps would not have been taken, for scarcely any blood appeared on the gloves and handkerchiefs; and it might be supposed, that if the party who committed the murder wore those articles at the time, they would not exhibit more marks than those produced. * * * As to the handkerchiefs, it might be said, that if the prisoner were the guilty party, he would never have placed them in his portmanteau, where they could not by possibility escape detection." "As for the operation of rewards, many crimes would go undiscovered without them; but it was for the jury to consider how far the credibility of witnesses was affected by the expectation of reward." In speaking of Baldwin's evidence, his lordship said, "The witness John Baldwin, the police constable, gave evidence as to the state of the leads and the walls; but he gave this testimony in such a way that it would be dangerous, in such a serious inquiry as this, to give any credit to it." His lordship then remarked on the favourable evidence as to the prisoner's character, explaining its true value

and tendency, as operating only in cases of doubtful facts, not where the facts were so strong ("though he did not mean to say they were so in this case") as to leave no reasonable doubt in the minds of the jury as to the guilt of the accused. After remarking on the difficulty of assigning the true motives of human action, and saying that a court of justice had to deal with facts only, and to reconcile them with the act charged against an accused, his lordship thus concluded his righteous and luminous summing up:—"After carefully considering the whole matter, it was for the jury to say whether the prisoner was guilty, or not guilty, of the crime with which he was charged."

The jury retired to consider their verdict; and, after an absence of an hour and twenty-five minutes, returned with a verdict of Guilty; on which the prisoner was sentenced to death, —the Chief-Justice telling him "that his guilt had been brought to light in a manner clear and convincing to all. The murder in itself, with the single exception of one direct circumstance against you, which subsequently appeared in the course of the trial, was involved in mystery. It was committed and planned by you with so much secrecy and cunning, aided by peculiar facilities of which you took advantage, that you considered yourself safe from the consequences of the crime."*

* The following is the conclusion of Courvoisier's confession, duly signed by him, and attested, and sent to the Home Office. It goes into details which, with the following exceptions, accord with the evidence adduced at the trial:—"The gloves were never placed in the shirt by me, nor to my knowledge. When I left Mr Fector's, I gave all my white gloves to the coachman. The handkerchiefs that were found in my portmanteau were never put there by me. They were in my drawer where I used to keep my dirty linen, or in my bag, with my dirty linen, in the pantry. If there is blood upon them, it must have been from my nose, as it sometimes bled. I know nothing whatever of the shirt-front. I turned up my coat and shirt sleeve of my right hand when I committed the murder. I did not use the pillow at all. After I had committed the murder, I undressed and went to bed as usual. I made the marks on the door on the outside, none of them from the inside, for the purpose of having it believed that thieves had broken

We have now laid before our readers, with all possible accuracy and fidelity, the whole proceedings of this memorable affair; and the question now to be considered is,—Did Mr Phillips discharge his duty as an advocate, consistently with the dictates of honour and morality; or did he irretrievably compromise his character, and, in so doing, cast a stigma on the great profession of which he is a member? The *Jurist*, in the article in which it admitted the sufficiency of Mr Phillips' explanations, thus speaks of the duty of the advocate, and Mr Phillips' due discharge of those duties:—"If the law has laid down, for the general protection, some certain rules of evidence, or otherwise, according to which, only, the legal conclusion of a man's guilt is to be arrived at, it is the duty of counsel to do as Mr Phillips did—to retain his brief, and to use every endeavour that his intellect can suggest, to take care that his client shall not be condemned except by a conclusion strictly deducible, by applying the fixed rules of the law to the evidence produced."*

Mr Baron Parke tersely defined to Mr Phillips that duty to be, "using all fair arguments arising on the evidence;" and the *Examiner* admits his duty to have been, "to confine himself to weighing the sufficiency of evidence, and examining flaws in its links;" that had he done this, "he would at least have in. I never made use of the chisel or the fire-irons. I placed the things about the house, to give the appearance of robbery. It is not true that the bottom bolt was never used to secure the door; it was bolted that night. I took the jewellery after I had committed the deed. All the marks on the door were made from the outside on the Monday night, for I got out of the pantry window and broke in at the door, and while getting out of the pantry window, made a little mark on the wall outside, near the water-pipe, which the witness Young saw, and mentioned in his evidence. I went to bed about two o'clock. I burned nothing. I did not wash my hands or the knife in the bidet in his lordship's bedroom. Sarah Manser knew nothing about it; neither did the cook, nor any of the other servants. I am the only person who is at all guilty.—FRANCOIS BENJAMIN COURVOISIER; June 22, 1840."—*Annual Register*, vol. lxxxii. p. 238.

* *Jurist*, 24th Nov. 1849.

avoided wrong and danger to others, in the defence of an assassin:" and "its objections to Mr Phillips' defence applied to the points in which he became the assailant or accuser of witnesses, whose truth he had no reason to suspect after Courvoisier's confession; and also to his solemn pretences of the prisoner's innocence." This was the wording of the charge nearly ten years ago. On the 24th of November 1849, the *Examiner* thus declared its deliberate adherence to the charge:—"Our plain and distinct averment against Mr Phillips is, that with a perfect knowledge where the guilt lay, *he endeavoured to cast the suspicion of the guilt upon the innocent*. To that averment we in all respects adhere." In the same number, also, it is stated, in allusion to their original accusation, "We did not accuse Mr Phillips of solemnly *protesting* his belief in Courvoisier's innocence, but of solemnly *acting* it! in short, our charge was restricted to his solemnly *acted* belief in the innocence of a murderer!" They were pleased to "admit Mr Phillips' right, in the peculiar circumstances of the case, to retain his brief 'even after the confession;'" and expressed their opinion that "his defence should turn, in such case, on the sufficiency of proof, and on technical points."

We have already placed our readers in a position to form their own judgment on this subject, and shall presently offer a few observations which have occurred to ourselves. But, in the first instance, we would ask how can the *Examiner* get rid of the distinct and emphatic testimony of the illustrious Judge who tried the case, and his very eminent brother Judge who sat beside him, and who states "that he had a reason, which the Chief-Justice did not know, for watching Mr Phillips;" both of whom concur in stating that "Mr Phillips had *carefully abstained from giving any personal opinion* in the case," and that he had never "appealed to Heaven as to his belief in Courvoisier's innocence?" while it is further expressly stated by two gentlemen of unquestionable veracity, honour, and standing at the Bar,

who publicly gave their names,* that they heard the late lamented Chief-Justice, shortly after the trial, and after the charge had been made against Mr Phillips, state that "Mr Phillips' observations had been much misunderstood;" that "he had, under circumstances of extraordinary difficulty, properly discharged a most painful duty;" that the Chief-Justice not only "exculpated him from the precise imputations," but made such a representation of the case as tended "to remove every impression to Mr Phillips' prejudice;" that "the Chief-Justice declared distinctly that he deeply regretted the attacks which were made on Mr Phillips, and strongly declared that there was no foundation for them." Can anything possibly be more decisive? To say nothing of similar strong concurrent testimonies from various gentlemen, independent and disinterested, who were present at the trial, heard, and closely attended to, all that Mr Phillips said, and have come forward honourably to bear such testimony—it must occur to any one, that the emphatic, undisputed testimony of two of the most gifted, distinguished, and high-minded Judges who ever adorned the seat of justice, is conclusive on the question. Consummately qualified for the task, they are equivalent to any conceivable number of the most thoroughly competent witnesses speaking to any facts which have come under their personal observation. Their integrity was, as the *Examiner* may possibly admit, beyond all question; their intellectual capacity far beyond a high standard of mankind; they had incomparable opportunities and facilities for observation; and one of them, a man remarkable for his acuteness and strength of intellect, declares that he "narrowly watched" this harassed advocate, and testifies to the unexceptionable manner in which he discharged his duty. How could, then, these two Judges have been mistaken? How could they ever have brought themselves deliberately to vouch the pro-

priety of conduct of which they even entertained the slightest doubt?

Let us, however, see what are the specific charges of the *Examiner*, and how they are borne out by the evidence on which they are professedly founded. They were originally thus expressed, and have been ever since adhered to:—That, after the confession of Courvoisier to Mr Phillips, he "threw out the cruellest insinuations against the witness Sarah Manser, and advanced the foulest charges against the police."† As to the former branch of this charge, there are just grounds for serious complaint against the *Examiner*. Nearly ten years ago, it originated the charge of "throwing out the cruellest insinuations against the witness Sarah Manser." We have ever since been under the impression, as doubtless have been the other readers of the *Examiner*, till the publication of Mr Phillips' letter in answer to his friend's challenge, that the *Examiner* had quoted frankly and fairly, without any suppression, from the *Times*' report of that part of Mr Phillips' speech on which the *Examiner* founded its imputations. We unfeignedly regret to say, however, that we find ourselves to have been altogether mistaken; that a single sentence has been picked out of a strong *bonâ fide* disclaimer, and placed conspicuously alone, as if it were the only sentence of the kind or tendency; and no allusion whatever is made to those immediately preceding it, containing an anxious, positive, emphatic exoneration of the female servants, such as the public never would have heard of, as far as the *Examiner* was concerned, even unto this day, but for Mr Phillips' letter, and our own careful reference to the *Times*' report! With the following pregnant words under its eye—uttered the instant after Mr Phillips had first mentioned the name of Sarah Manser,—"*and here he would beg the jury not to suppose for a moment that he meant to cast the crime upon either of the female servants*,"—the *Examiner* contents itself with quoting the ensuing:—"God forbid that any

* Mr Mellor of the Midland, and Mr Flowers of the Oxford Circuit.—*Correspondence*, pp. 25, 28.

† *Examiner*, 27th June 1849.

breath of his should send tainted into the world persons perhaps depending for their subsistence upon their character! It was not his duty, nor his interest, nor his policy to do so."

The following is the entire passage, as given in the *Times*:—

"What said Mr Adolphus, and his witness, Sarah Manser? *Here he would beg the jury not to suppose for a moment, in the course of the narrative with which he must trouble them, that he meant to cast the crime upon either of the female servants.* It was not at all necessary to his case to do so; he wished not to asperse them. God forbid that any breath of his should send tainted into the world persons perhaps depending for their subsistence upon their character. It was not his duty, nor his interest, nor his policy to do so."

The following is the mode in which the *Examiner* originally (27th of June 1840) cited *one portion only* of the above:—

"The intended line of defence (query, *lie* of defence?) was not changed by the communication [of the confession]. The cruellest insinuations were thrown out against the witness Sarah Manser, and the foulest charges advanced against the police.

"Mr Phillips disclaimed the intention to criminate the female servants. No, forsooth!

"God forbid that any breath of his should send tainted into the world persons dependent for their subsistence upon their character! It was not his duty, nor his interest, nor his policy to do so."

"But did he, or did he not, make the attempt in this passage?

"The prisoner had seen his master," &c.

[Quoting the passage beginning with these words, and given *ante*, p. 246]. Thus the *Examiner*, on the 27th of June 1840, totally suppressed the all-important passage in question, which had given a tone to the entire speech: and on the 24th of November 1849, deliberately reprinted the article of 1840, without supplying or alluding to the deficiency! and in its own article of the former date, thus sum-

marily and obscurely deals with this same apparently unwelcome passage, in professing to quote from the *Times*:—

"And here he would beg, &c. *He wished not to asperse the female servants, God forbid!* &c. &c. It was not at all necessary to his case to do so." *

How is all this to be explained, and on what principle can it be justified? and in a writer avowing, in the same article, that he "writes with the file of the 'Times' before him?" Did it never occur to the writer or writers of all these articles, as very material that such passages as we have now called to their attention should be publicly noticed by them; and credit given for them to the gentleman whom they were so cruelly assailing?

Is this dealing fairly?—The *Examiner*, having thus prefaced this garbled extract (for such we must call it) with the words, "Mr Phillips disclaimed the intention to criminate the female servants. No, forsooth!" subjoins, "But did he, or did he not, make the attempt in this passage?" and then quotes the brief passing comment of Mr Phillips, legitimately made on an answer given by the witness in open court; and this is positively its only proof of the grave charge, that he attempted to fasten the guilt of the murder upon the female servants! Again totally suppressing, not only a still more impressive and conspicuous disclaimer, in the very same portion of the speech from which the *Examiner* is quoting, of all imputation on the women servants,—but a distinct assertion that he regarded their agitation, on the occasion in question, as a "PROOF OF THEIR INNOCENCE;" adding, even, "GOD FORBID HE SHOULD INSINUATE IT WAS A PROOF OF THEIR GUILT!" We ask, how is it possible to suppose that these signal passages could have escaped the sharp eyes scrutinising the paragraph in which they occur—scrutinising it, too, not from a zealous desire to exculpate and to defend, but

* This last passage is printed in a column parallel to the quotation from Mr Phillips' letter; which circumstance may possibly be assigned by the *Examiner* as a reason for referring to it only by the leading words of the sentence, and an "&c."

to inculcate and accuse? And if they were seen, why were they deliberately and perseveringly suppressed, while an attempt was made, by citing an isolated passage, as if it were the only one of that character or tendency, to sustain the charge *which those former passages so clearly contradicted?* The *Examiner* itself has unwittingly supplied evidence of the extent to which it has misled the journals relying upon its accuracy and fairness; for it has quoted extracts from their columns, conclusively showing the ignorance of the writers that such passages were to be found in Mr Phillips' speech, as are given in this article, but were *not* supplied by the *Examiner*! Again, it is of the last importance to remark, that the solitary and strictly legitimate comment of Mr Phillips, on the remark which fell from Sarah Manser, which he said simply had "struck him as extraordinary," occurs in the midst of that passage of the speech in which he is refuting Mr Adolphus' first proposition, that the prisoner's *agitation* was a proof of his guilt: Mr Phillips immediately, and with evident eagerness, seizing an opportunity to make that second declaration of his belief of the women servants' innocence, on which the *Examiner* has ever been so suspiciously silent! What becomes of the alleged cruel and infamous "insinuation" in the solitary comment in question, *preceded* as it is, and *followed* as it is, by full, emphatic disclaimers and protests? Regarded fairly as a link in the chain of argument, the real drift of that comment is, that the jury might regard what fell from Sarah Manser, on this and other occasions, as *inaccurate*—as an exclamation *not justified by the appearances around her at the time*; for proved circumstances are recited showing that she could *then* have had no *reason* for suspecting personal injury to her master. It is really sickening to have to deal with such perversion and overstraining as that here exhibited by the *Examiner*, which sees in this comment only "imputations of a knowledge of the murder" by the

housemaid, "previous to Courvoisier's knowledge of it!" This one comment of Mr Phillips is the only *scintilla* of evidence offered by his accuser in support of the dreadful charge of deliberately attempting to destroy the innocent, in order to shield the guilty! There is not the faintest allusion to the women servants, except such as we have quoted: nor is there throughout the entire three hours' speech, wherever reported, as far as we have seen, the slightest attempt to suggest or insinuate that "*any of the witnesses*"* had committed the murder, or were in any way cognisant of it; but, on the contrary, an explicit and straightforward disclaimer of any such imputation. What motives, indeed, could Mr Phillips have had for resorting to such an unjustifiable topic of defence (and in the presence of Mr Baron Parke), when he had already one amply sufficient for his purpose,—one strictly legitimate, and established by the sworn evidence in the cause, as we shall presently demonstrate, and must, indeed, be already apparent to our readers, and to which he pointedly referred at the very outset of his speech? This attempt, then, to dislocate the solitary brief passage in question, and wrest it into a wrong significancy, appears to us to resemble the style of procedure of those who would, as Lord Erskine said, prove the Psalmist guilty of blasphemously asserting that "there is no God," by suppressing the preceding words—"the fool hath said in his heart." There is really not a shadow of pretence for this grievous accusation. Nothing could have sustained it but proof that the *general tendency* of Mr Phillips' speech was to save his client, by incriminating the women servants: whereas it was precisely the reverse! How, indeed, could Chief-Justice Tindal have failed to notice such an attempt in his summing up, and exonerate an outraged female's character from so foul and unfounded an imputation? Yet that acute and watchful Judge uttered not a breath of censure—not a suggestion

* *Morning Herald*, June 22, 1840.

as to a harsh or unjustifiable comment or insinuation on the part of Mr Phillips! How, again, could Mr Baron Parke, sitting beside him, have tolerated the slightest tendency or approach towards such an imputation, without an instant and indignant interference to stop that which he would have known to be so revolting a display of depravity? and to which, by his silence, he would almost have made himself a party: for *qui non prohibet, cum prohibere possit, consentire videtur*! How, finally, could the Chief-Justice, after hearing subsequently of the confession, have testified to the "proper" discharge by Mr Phillips of "a most painful duty," and the "groundlessness of the imputations" upon him? To the cross-examination of Sarah Manser, before the confession, no one can possibly object, nor, that we know of, ever has. It does not appear to us in any way objectionable; and yet the *Examiner* recently* professed to recite an advertisement issued on behalf of Sarah Manser, in 1840, in order to sustain its charge against Mr Phillips (of course, in respect of his *speech*), which expressly attributes her mental and physical prostration to the "harassing interrogations to which she was subjected, *preceding* the providential discovery of the guilt of Courvoisier!"† To all the foregoing disproofs of this shocking imputation, we must add the silence of the leading organs of public opinion at the time. The *Times* would, assuredly, never have passed by such a flagrant instance of forensic turpitude; nor are we aware of any other journal, except the *Examiner*, and the few who too hastily adopted its accusation, that countenanced such imputations. In the *Annual Register* no notice whatever is taken of such a disfiguring feature of the defence, which is thus

* *Examiner*, 24th Nov. 1849.

† The *Examiner* states, in a note, that "to the above 'advertisement' unhappily no effectual response was made"—a circumstance suggesting a significant inference. Had Sarah Manser been the victim into which it has since been sought to convert her, the British public would not have been appealed to in vain on her behalf.

epitomised:—"Mr Phillips then elaborately dissected the evidence; pointing out some discrepancies, taking advantage of every piece of testimony which could raise a presumption of the prisoner's innocence, and artfully insinuating that he was the victim of a conspiracy among the policemen to divide the large reward of £450 over Courvoisier's coffin."‡ Could this impartial chronicler have overlooked, after the public disclosure of the confession, the more hideous feature of the advocate's falsely imputing the known guilt of an assassin to an innocent woman, if such feature had really existed? And as to the "artful insinuation" respecting the policemen, let us now see how far the expression was justifiable.

The next head of charge against Mr Phillips is, "his advancing the foulest charges against the police, the groundlessness of which he knew, as well as his client's guilt." This appears to be not only equally unsustained, but equally disproved, by the evidence, with the former charge; and also to have been advanced in defiance, or at least in total oblivion of the proved facts. Mr Phillips *bonâ fide* believed that there had been unfair "practices" among the police, to fabricate evidence in support of a case otherwise too doubtful, in his opinion, to warrant that conviction on which depended their participation in the large reward. That this belief was perfectly consistent with his own private knowledge of Courvoisier's guilt,—a fact which was unknown to the police,—is obvious to any one of common candour or sense; and we have taken care to lay before our readers the premises from which they may draw their own inferences, as to the reasonableness and *bonâ fides* of Mr Phillips' belief. We are, ourselves, utterly unable, on considering the evidence, to account satisfactorily for the blood-spotted gloves and handkerchiefs found in the prisoner's box on the 14th of May, having been there on the 6th and 8th of May, and yet, on the latter two occasions, escaping the observation of the acute

‡ Vol. lxxxii. pp. 234, 235.

and practised police, who searched expressly for the purpose of making such discoveries! What would the Judge, what would the Bar, what would the jury, what would the public, have thought and said, of the advocate, who, his lips hermetically sealed as to the confession, and addressing himself anxiously and exclusively to the evidence, according to which alone the jury were to decide, should have passed over these glaring topics of defence—topics which Mr Adolphus had, in his opening, not only shrunk from adopting as a part of his case, but expressly and significantly discarded? Why, but because he suspected the evidence in question to be spurious, and calculated to damage the case for the prosecution. Nevertheless, the advocate of the prisoner was ignominiously to disregard these advantages, and yet have credit for doing his duty by that prisoner! Would not an undying clamour have arisen against a British advocate, as having shamefully sacrificed his client to British prejudices, and given him over, bound hand and foot, to the great ducal family so pointedly alluded to by Mr Adolphus? We ask again,—why did Mr Adolphus discard this evidence, and also anticipate an attack on the police? Why “place no reliance on anything at any time found in the trunk,” but because he who had seen all the depositions had heavy misgivings as to the *bonâ fide* character of that part of the evidence, and sought to obviate, by anticipation, the powerful comments which he knew would be made upon it on behalf of the prisoner? Where, then, is the evidence of Mr Phillips’ knowledge of “the groundlessness of these charges?” Will any competent reader of the foregoing pages concur in opinion that these charges were groundless, that Mr Phillips knew them to be so, and should have altogether passed by such topics? In speaking, however, of his “unjustifiable attacks on the police,” what is to be said of the policeman Baldwin, whose evidence the Chief-Justice, in his summing up, actually declared that Mr Phillips had annihi-

lated? Yet the *Examiner*, without alluding to this most decisive fact in the case, actually ventures to speak of the attack on Baldwin as “still more unjustifiable” * than that on a former witness! The latter being a policeman named Pearce, to whose evidence we refer the reader,† and which the Chief-Justice left altogether to the jury to decide upon, with reference to the imputation of Mr Phillips, founded solely on the answers given by the witness, whether he had dealt fairly or unfairly with the prisoner, and attempted to extort from him a confession; adding, “that if they thought that such had been his intention, nothing could have been more unfair.” But when a policeman gives what Mr Phillips deemed honest evidence, as in the case of Inspector Tedman, he deals very differently; and, in the last-mentioned instance, positively compliments Tedman before the jury, “as” (according to the report in the *Times*) “an officer who had given his evidence most fairly:” while Mr Phillips is thus reported in the *Morning Chronicle*:—“I have great pleasure, first of all, in bearing my testimony to the conduct of the witness, Inspector Tedman, and in reference to the whole course of proceedings which he has adopted in this case; * * * an honest man, who examined the trunk on the 6th, and went again to it on the 13th, with a fair and proper reason.” Yet this witness had given evidence telling with deadly effect on Mr Phillips’ client; but it was immediately after Mr Phillips had received his client’s astounding confession. What then became of Mr Phillips’ “advancing the foulest charges, the groundlessness of which he knew,” against the police? And why was not the striking fact of this discriminating treatment of the police noticed by a candid inquirer into truth? With reference to the other policemen, Mr Phillips’ attack upon them, both in question and comment, was, as we have seen, confined strictly to those parts of their evidence which appear-

* *Examiner*, June 27, 1840.

† *Ante*, p. 243.

ed to him inconsistent with each other and with truth, but consistent with the belief that they were using unfair means to earn a large reward, by completing the links in a chain of evidence which *they* reasonably enough deemed imperfect. He asked not a question as to any of the other facts to which they deposed; nor, in his address to the jury, sought in the least degree to discredit their evidence as to such facts. A more unfounded charge, then, than this can scarcely be imagined. We are surprised, indeed, that Mr Phillips should himself have altogether overlooked so strong a part of his own case, in his letter to his friend. He could not have had before him the original *Examiner*, which contained the easily disprovable charge in respect of the police; yet the recent *Examiner* * positively reproaches him with this omission! We, too, must, in our turn, ask Mr Phillips how he came to do so? and not only that question, but how *he* came to overlook the pregnant paragraph to which we have already called attention, with reference to his explicit exculpation of the women servants, and which, in *his* case, is utterly inexplicable, except on the supposition of a too hasty reference to the "files of the *Times*." The policy of offering rewards for the discovery of crime, may well be a moot point; and Mr Phillips' objections to this topic in addressing the jury, are put tersely and forcibly. He had elicited from the witnesses, especially the trustworthy Inspector Tedman, that the box of Courvoisier, in which were made such mysterious discoveries, had remained accessible from morning to night to the police and others interested in entitling themselves to the very large reward. If there were, *on the evidence*, a fair ground for imputing to the police that they were trading in "blood-money,"—that is, that they were manufacturing proofs of guilt, and in a capital case, in order to entitle themselves to that money,—is there any language too forcible or severe to be applied to such execrable criminality? And is it not

beneath contempt, in such a case, to dwell hypercritically on mere expressions?

The next item of accusation against Mr Phillips is his "defaming the character of Mrs Piolaine," and uttering "gross imputations," and "wicked and unfounded aspersions" on her "and on her husband." In support of this charge, the *Examiner* simply quotes the following passage from Mr Phillips' speech, as if it had been purely a gratuitous and unfounded slander of his own:—"He hoped the jury knew something of Leicester Place. If they did, they knew the character of this hotel, with a billiard-room attached to it, where, unlike at a respectable hotel, any stranger, not being a guest, might enter and gamble." On referring to the evidence of this witness, it will be seen † whether Mr Phillips went beyond it, or did more than comment on an admission made by the witness herself! He also made other just comments on other portions of her evidence already before the reader, whom we invite to consider whether they were such as he would have been himself inclined to credit. That she gave true evidence, in the main, as to the identity of the person who had left the plate with her, cannot now be doubted; but had not Mr Phillips a perfect right to "use all fair arguments arising on the evidence," according to the canon of Mr Baron Parke, to "weigh the sufficiency of proof, and examine flaws in its links;" according to the concession of the *Examiner* itself? Mr Phillips desired undoubtedly to convey to the jury the idea that the "hotel" of the Piolaines was not of a superior kind; that any one, out of the street, might go in and play at the billiard-table there: he undoubtedly suggested that there was gambling there, though the witness denied the fact of its being a gambling-house, both to him, and, on re-examination, to Mr Adolphus. Of the manner of such denial, however, the reader will judge for himself, and couple with it the not unreasonable complaint to the jury of Mr Phillips,

* 24th Nov. 1849.

† *Ante*, p. 244.

that he had not had the slightest opportunity afforded him by the prosecution of inquiring beforehand into the character and circumstances of so critical a witness.

The remaining accusation of the *Examiner*, against Mr Phillips, was one of a fearful description, but which it has seen since fit essentially to modify. In the first paper in which Mr Phillips' defence of Courvoisier was mentioned, viz., on the 27th June 1840, the *Examiner* quoted a paragraph from the *Times*, beginning thus:—"A correspondent of the *Times* states—" and then followed the paragraph in question, professing to repeat a complaint of Mr Phillips, in court, of a gross and false statement concerning him. "The effect of the statement was, *that he had made a solemn appeal to God of Courvoisier's innocence*;" and the paragraph went on to state that Mr Phillips had spoken to both the learned Judges on the subject, and they assured him they had purposely watched his speech, and felt quite convinced that he never attempted to use the language attributed to him. Many others in court gave similar testimony. The *Examiner* then thus proceeds:—"In the *Times*' report we find this emphatic assertion: '*The omniscient God alone knew who did this crime.*' This was said by the man who himself knew who did the crime, and who profaned the name of the Deity by thrusting it into a solemn assertion of the untruth of which he was cognisant." And in the conclusion of the article, it distinctly specified, as one of its two heads of objection to Mr Phillips' defence, "*his solemn pretences of the murderer's innocence.*" In this shape the charge has ever since had currency, conveying probably to thousands of persons the idea that Mr Phillips had distinctly avowed and professed his belief in Courvoisier's innocence, in a speech made after the miscreant's confession to him. We are not without suspicion that the word "pretences," in the above extract, may have been originally written "professions," or "protestations:" as founded by the writer on the charge above quoted by

the *Examiner* from the correspondent of the *Times*, viz., that Mr Phillips had "made a solemn appeal to God of Courvoisier's innocence." Probably also the writer in the *Examiner* had seen the absurd statement which had been put forth in a since defunct newspaper, that Mr Phillips had said, in his speech to the jury, "On my soul, I believe Courvoisier innocent of the crime!" Finding it expedient, therefore, neither to abandon nor assert the charge in terms, the writer possibly contented himself with substituting the word "pretences" for "profession," or "protestation," "of the murderer's innocence." "Solemn 'pretences' of innocence," is evidently a forced and unnatural expression: while "solemn 'professions,' or 'protestations' of innocence," is simple and natural. The testimony adduced by Mr Phillips, on this point, in his letter, appear to us irresistible. Taking the newspaper in which the charge was contained, to the two Judges who had been present at the trial, he asked them whether he had ever used any such expression? "*You certainly did not*, Phillips," replied Chief-Justice Tindal, "and I will be your voucher whenever you choose to call me." "And I," said Mr Baron Parke, "had a reason, which the Lord Chief-Justice did not know, for watching you narrowly; and he will remember my saying to him, when you sate down, 'Brother Tindal, did you observe how carefully Phillips abstained from giving *any personal opinion* in the case?' To this the learned Chief-Justice instantly assented."* We have personal reason to know, independently of Mr Phillips' putting forward this statement, that it is strictly correct. Mr Baron Parke is aware of it, and could have instantly contradicted, or can now † contradict it, if it be in any respect inaccurate. If then, this testimony be true, in our minds it settles the question. It is mere drivelling to quibble about forms of expression, as against the evidence of two such men

* *Correspondence*, pp. 14, 15.

† This paper has been carefully read by this distinguished Judge, and the author has conversed with him on the subject more than once.

as the late Chief-Justice Tindal and Mr Baron Parke. The *thing*—the very substance of the matter so pointedly called to their attention was, whether Mr Phillips had expressed any opinion of his own, “any personal opinion” in the case, as to Courvoisier’s guilt or innocence, in whatever form he might have expressed it: whether as solemnly declaring the fact of guilt to be known to the Deity alone, or as declaring the speaker’s belief that Courvoisier was not the guilty person? Mr Baron Parke distinctly vouches, that, knowing as much as Mr Phillips so unfortunately knew, he had for that reason “narrowly watched” him, doubtless weighing, as Mr Baron Parke can and does weigh whatever is said before him, especially in his judicial capacity, every word and turn of expression of Mr Phillips. And on his sitting down gave expression to the result of his “narrow watching,” viz., “how carefully Phillips had abstained from giving any personal opinion on the case.” The Chief-Justice “instantly assented;” and this assent was given, after he, also, had been made aware of the cruel position in which Courvoisier had placed his counsel. What but a perfect confidence in his innocence could have emboldened Mr Phillips to make this pointed appeal to two judicial personages, whose answer in the affirmative, or silence, would have withered the appellant? Both were high-minded men, and would not have given the decisive and peremptory answer in the negative, if they had not been perfectly clear on the matter. After this, we will presume everything in favour of Mr Phillips, and against his accusers.

Staggered, doubtless, by this unexpected evidence, the *Examiner* of November 24th last altogether changed its ground: gave a new colouring to its original assertion of Mr Phillips’ “solemn pretences of the murderer’s innocence;” and declared that “they did not accuse him of solemnly *protesting* his belief in Courvoisier’s innocence, but of solemnly *acting* it.” Such are the dismal shifts of determined disingenuousness! What is the

meaning of an advocate’s acting a belief of his client’s innocence? Would the *Examiner* have him do the reverse, and *act* a belief of his client’s guilt? Would they have an advocate go through a “solemn” and cruel mockery, only, of defence? Would they have his looks, his gestures, his topics, “solemnly” belie the purpose for which he had professedly risen? It is a matter which does not bear an instant’s arguing. The *Examiner* proceeded further to endeavour to explain its new position:—“We asserted that Mr Phillips invented a falsehood, to profess, not faith in his client’s innocence, but ignorance of his guilt;” and “profaned the name of the Deity by using it to give solemnity to this falsehood.” If we *must* follow the *Examiner* into this new position, we say, first, assuming that Mr Phillips actually used the precise expressions attributed to him by the *Times*, viz., “The omniscient God alone knew who did this crime,” is it not cruel and monstrous to suppose that Mr Phillips deliberately *intended* to appeal to the Almighty to attest the truth of an assertion that he was ignorant of his client’s guilt? While objecting strongly to the strain of allusion to the Deity in parts of the speech, common candour suggests that in the passage in question no more was really meant than a conventional, though most irreverent mode of telling the jury, that as far as concerned them, who could know nothing but what the evidence told them, no one but God knew who had committed the guilty act; that they would forget their oaths, if they travelled for a moment out of the evidence to decide the question submitted to them. In this very case, the Chief-Justice, as will have been seen, impressively cautioned the jury on the subject, at the commencement of his charge. But in the present instance, could Mr Phillips have really and deliberately *intended* to declare that the Deity alone knew that which the speaker, Mr Baron Parke, Mr Clarkson, Mr Flower, and the wretched prisoner himself knew? Common sense and common candour revolt from the sug-

gestion. It should, on every legitimate and fair principle of interpretation, be regarded as a mere figure of speech, most improper undoubtedly, but involving no more of deliberate moral turpitude than the too frequent conversational expression, "God knows!"—or "God *only* knows!"—a fact which one instant's reflection would show the irreverent speaker must be known to one, two, or many persons. Nothing but a reckless determination to draw harsh inferences, would induce a man to persevere in torturing the expression attributed to this eloquent advocate, into an impiously deliberate appeal to the Deity to attest a known falsehood! But did Mr Phillips, in fact, use the expression? We verily believe that he did not, but one which might be very easily misunderstood for it. The report in the *Times* is given in the third person, and not professedly *verbatim*; and the slightest turn of expression, unconsciously, would make all the difference. We have made inquiries on this subject, and find that a member of the Bar who was present at the trial,—a gentleman of long standing in the profession, of ability, of high character, and unquestionable honour—Mr Fortescue,*—paid close attention to Mr Phillips, and will state on oath, without the slightest hesitation, as he has ever since stated on innumerable occasions when the subject was mentioned, that Mr Phillips' exact words were—"But you will say to me, if the prisoner did it not, who did it? I answer, *ask the Omniscient Being above us, who did it*: ask not me, a poor finite creature like yourselves: ask the prosecutor who did it;—it is for *him* to tell you who did it; it is not for *me* to tell you who did it; and until he shall have proved, by the clearest evidence, that it was the prisoner at the bar, beware how you imbrue your hands in

the blood of that young man." How easy for even the ablest reporter (and the report of these proceedings in the *Times* evinces the utmost ability and fidelity), in throwing the above sentence into the third person, to adopt the phraseology, on the literal accuracy of which it is now sought to impale the reputation of a distinguished advocate!

But even admitting that Mr Phillips, in the course of a three hours' speech, was betrayed into the momentary adoption of this expression—which we are satisfied, for reasons above stated, was not the fact—is it not the height of injustice and uncharitableness to put upon it the very worst construction of which the words are susceptible—to weigh with malignant nicety verbal expressions, uttered, too, on such a fearful occasion, in golden scales? We believe that the profession and the public are too just to tolerate such a thing for a moment; and we almost fear that we have expended too much pains in demonstrating to be erroneous the representations and misconstructions of this self-constituted censor. For aught we can tell, those who have made these accusations against a distinguished member of our profession, are not themselves members of it, know nothing practically of the duties of advocacy, and are unacquainted with the principles of legal investigation. One leading principle on which it is conducted, we wish them to understand, is to examine thoroughly into facts before coming to conclusions, and especially before hazarding destructive imputations on character; to state evidence with rigid impartiality, avoiding equally the *allegatio falsi* and the *suppressio veri*; to put a liberal construction on doubtful acts; always presuming against, and not in favour of, dishonourable and wicked motives and intentions.

We should not pass over a last shred of objection, presented with all the emphasis which can be derived from italics and small capitals; we allude to the natural solemnity and fervour with which Mr Phillips cau-

* This gentleman has informed us, that the moment he heard of the statement attributed to Mr Phillips, he said to his informant, "I know the passage which must have been misunderstood:" repeated the words as above given, and immediately went to Mr Phillips, repeated them to him, and offered to communicate it to the newspapers.

tioned the jury against violating their oaths by "pronouncing," and that while dealing with the life of a fellow-creature, "the word 'guilty' lightly." And can any words be too stringent and impressive in giving such a caution? Is it not one uniformly pressed in such cases by counsel, the ablest and best that ever did honour to the Bar? And is it not fair to impute even an excess of earnestness on this point to Mr Phillips' natural anxiety to conceal from the jury the blighting secret which was "weighing upon his heart,"—to resist its benumbing influence? Those who would deliberately convert this into a serious accusation, must indeed be driven to straits. And can it be tolerated that an able and zealous advocate is to be dragged forth week after week,* and sought to be made ridiculous, odious, or criminal, because, in a case of life and death, he clothes in fervid words his appeal to those in whose hands lies his client's life,—that life which he has solemnly promised to do his utmost to defend? It would be an insufferable usurpation, and tend to palsy the genius of advocacy, and in doing so, inflict deadly and irreparable injury, not on the Bar, but on those who are compelled to avail themselves of the exertions of the Bar, in desperate and mortal exigencies! We protest against the assumption by the one, or the recognition by the other, of any such right.

The cruel charges with which we have been dealing, and of which we trust we have satisfactorily and finally disposed, are of almost as serious a character as can be conceived. Mr Phillips has been charged by the *Examiner*, on its own recent admission, from "time to time,"* during the last ten years, with the horrible impiety of deliberately calling on the Deity to attest a falsehood; and with the execrable attempt to procure the acquittal of an assassin who had confess-

* *Examiner*, Nov. 24, 1840. On the very day on which we are writing (Saturday, the 26th of January 1850), the *Examiner* goes out of its way to make an insulting allusion, on the subject of these charges, to Mr Phillips, and even calls him by a nick-name!

ed to him his guilt, by throwing that guilt upon an innocent woman, whom Mr Phillips' misconduct drove into a lunatic asylum! These are charges of terrible gravity, requiring to be established by the clearest and most cogent evidence, given with rigorous fairness to the accused. That those of the *Examiner* have not been so sustained, we conscientiously believe, and are unwilling to impute the errors which we have detected, to personal malignity, or a deliberate intention to do wrong. It can never be too late to repair an act of injustice; and it is almost an atonement for even long-continued misrepresentation, to come forward with a magnanimous avowal of error. Who can be interested in thus casting dark shadows over the evening of an unoffending and honourable man's life? What act during Mr Phillips' whole career justifies the belief that he could have committed the atrocities imputed to him? Was he suddenly bereft of both integrity and understanding?

After a long, a dispassionate, and a thorough investigation into all the facts on which the *Examiner's* pertinacious accusation against him is professedly based, we have come to the conclusion that Mr Phillips' conduct has been from first to last most cruelly misrepresented with reference to his defence of Courvoisier. We have watched every turn of the case, and seen in this gentleman's conduct of it nothing inconsistent with honour, or calculated to do anything but reflect credit on that great profession of which he has been so long one of the most brilliant ornaments. We doubt whether his position, at and after the paralysing confession to him of his client's guilt, has a parallel in the annals of advocacy. Every presumption should surely be made in favour of one suddenly placed at such a desperate disadvantage. But Mr Phillips needs not the aid of presumptions. Most fortunately for him, his defence against these cruel and persevering accusations rests on evidence irrefragable—that of two witnesses, in the late distinguished Chief-

<p>Justice Tindal, and the present equally distinguished Baron Parke, each in himself a host of consummately qualified witnesses. It is impossible to rate human testimony higher than that which exonerates Mr Phillips from those sedulously circulated charges of cruelty and impiety which we be-</p>	<p>lieve to be now finally disposed of. And to those who have originated and perpetuated that charge, we recommend a more strict obedience to both the letter and the spirit of the divine commandment, <i>Thou shalt not bear false witness against thy neighbour.</i></p>
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MODERN STATE TRIALS.*

No. I.

THE WELSH RIOTERS.—HIGH TREASON.

THE idea of this work is happily conceived, and carried into effect, in the two volumes before us, with no little judgment and ability. The subject is at once interesting, useful, and important; and the author was in many respects well qualified to deal with it, by his talents, his accomplishments, his professional acquirements, and his experienced observation. It will be seen that we use different tenses, in speaking of the author, and of his work; and there is a melancholy significance in the distinction. Within a few days of his sending to us, personally, these two volumes, he died, unexpectedly, in the flower of his age, and just as he had attained an honour which he had long coveted—that of being raised to the rank of Queen's Counsel. On the first day of last Easter term, he presented himself in each of the courts at Westminster, in his "silk" gown, exchanging the customary obeisances with the Judges, the Queen's Counsel, and the great body of his brethren behind the bar, on being formally called by the Lord Chief-Justice "to take his seat with in the bar, Her Majesty having been pleased to appoint him one of Her Majesty's Counsel." He looked pleasantly excited: alas, how little anticipating that the last day of that same term would see him stripped of his long-coveted insignia, and clothed in the dismal vesture of the grave! For on that day he died, after a brief but severe illness, in his forty-sixth year. A serious attack of rheumatic fever, several years before, had permanently impaired his physical energies, though not to such an extent as to prevent the exercise of his profession. His practice, till latterly, had been chiefly at the Cheshire and Manchester sessions, from which he gradually rose into considerable business, both civil and criminal, on the North Wales circuit. On being raised to his briefly-held rank, the prospect of a successful career opened before him; for he knew his profession well, as those were aware who were able and disposed to push him forward. During Easter term he was engaged before a committee of the House of Commons, to conduct a case of some importance. This was a lucrative branch of practice, which he was naturally eager to cultivate. Fatigue, anxiety, and excitement induced the return of an old

* *Blackwood's Magazine*, October 1850.

"*Modern State Trials*: Revised and Illustrated, with Essays and Notes. By WILLIAM C. TOWNSEND, Esq., M.A., Q.C., Recorder of Macclesfield. In 2 vols. 8vo. Longman & Co. 1850."

It was and is one of the objects of this short series of papers, which attracted much attention in America, and also at home, to aid in bringing into notice the work on which they were founded, written by an accomplished and experienced friend of the author. The latter has, however, treated every topic entirely in his own way, and introduced many not to be found in the two eloquent and valuable volumes in question. The author has bestowed great pains upon these papers, in the hope of interesting both professional and general readers. For detailed and correct accounts of the cases themselves, reference must be made to Mr Townsend's volumes; for they contain what the author of these papers does not know to be collected elsewhere.

complaint, accompanied by new and somewhat startling symptoms; but though utterly unfit for business, he could not be restrained from attending the committee room, though it was necessary to carry him in a chair up the long flight of steps leading to the corridor in the new House. He was soon, however, obliged to return as he had gone. The palsy hand of Death had touched the eager lawyer! After much suffering he expired on the 8th of May, the last day of Easter term, and on the 13th was buried in the vaults of Lincoln's Inn, of which he had only a few days previously been elected a Benchet! He was a member of Queen's College, Oxford, where he graduated, we believe, with honours, in 1824; was called to the Bar in 1828; and elected Recorder of Macclesfield in 1833.—As a speaker he was correct and fluent, though not forcible; as an advocate, judicious and successful. He was a man of classical tastes, extensively read in literature, and exceedingly familiar with political history, and constitutional law. What he knew, he could use readily and effectively, both as a writer and a speaker. He was extremely industrious with his pen, during every interval between his professional engagements; and has left behind him, independently of his contributions to periodical literature, three works—the “History of the House of Commons, from 1688 to 1832;” the “Lives of Twelve Eminent Judges,” and the work now before us. The first of these was published in 1843–4 in two volumes octavo. The author's professed object was to present “a popular history of the House of Commons, with biographical notices of those members who have been most distinguished in its annals; and describing the changes in its internal economy, powers, and privileges,” during the space of a hundred and forty-four years elapsing between two memorable periods—the “noble introduction” to Parliamentary Records, “afforded by the Convention Parliament of 1688,” and the “eventful

close” witnessed in the second Parliament of William IV., which passed “the Reform Bill.” This space he subdivided into three distinguishing eras:—

“The *first* includes a space of thirty-nine years, from the abdication of James to the death of George I. in 1727, characterised by master spirits, critical events, and stirring debate. The *second* era, a sort of mezzo-termo, comprehends the reign of George II., when men in office were corrupt, and public morals low, and the general topics of discourse resembled parish vestry discussions, but still a prosperous reign, the sound common-sense of Walpole promoting, even by inglorious acts, the national welfare, and Chatham's genius rescuing the age from mediocrity.

“The regular publication of the debates, and troubles in America, usher in the *last*, and most glorious epoch, the days of North and Burke, of Pitt and Fox, of Windham and Canning, of Tierney, Brougham, and Peel, illustrated by oratory enduring as the language, and with memories of statesmen that can never die.”

Mr Townsend's second work was published, about four years afterwards, viz., in 1848, also in two volumes, and entitled “Lives of Twelve Eminent Judges of the Last and Present Century.” These were—Lord Alvanley, Mr Justice Buller, Lord Eldon, Lord Ellenborough, Lord Erskine, Sir Vicary Gibbs, Sir William Grant, Lord Kenyon, Lord Loughborough, Lord Redesdale, Lord Stowell, and Lord Tenterden. This work consisted of memoirs, which the author had previously published in the “Law Magazine,” where they had attracted considerable attention from the profession; as they contained many interesting and entertaining anecdotes, and information not easily attainable elsewhere. Both of these works are of an entertaining character. They are written in an easy, flowing style, occasionally, however, somewhat loose and gossiping. It must be owned that the author's *forte* does not lie in the delineation of character,

either moral or intellectual. If he really possessed a quick and searching insight into it, he would seem to have felt a greater pleasure in grouping about each individual who was the subject of his pencil, the general incidents of his position, than in penetrating his idiosyncrasy, and detecting the operation of those incidents upon it. He does not conceive distinctly of *his man*, keeping his eye steadily upon him, with a view to the development and exhibition of character; but is apt, if we may be allowed so to speak, to lose him, in his very life. Still the work is a creditable acquisition to popular and professional literature, and equally with its predecessor, evidences the mild and candid temper and character of the author.

Thus much we thought it only fair to premise, in justice to the memory of an amiable and accomplished member of the English Bar, and a man of letters; one, too, who in his political opinions, was a staunch and consistent upholder of those to which "Blackwood's Magazine" has from the first been consistently devoted. In no instance, however—in neither of the two works at which we have been thus glancing in passing, nor in that now lying before us—did Mr Townsend suffer his political opinions to bias his judgment, or betray him into the faintest semblance of partiality or injustice.

It is time now to direct attention to his last work, which he barely lived to see published—his "Modern State Trials," spread over two goodly octavo volumes, containing nearly eleven hundred pages, and these, too, pretty closely printed. Upon this work much thought and labour have evidently been bestowed in the collection of his materials, and dealing with them, as in the volumes before us, in such a manner as to render the product at once interesting and instructive to both general and professional readers.

It is no slight matter to make one's-self thoroughly master of a Great Case, in all its bearings; to

seize its true governing characteristics; to select, condense, and arrange facts and incidents: to assign to every actor, whether judge, jury, witness, counsel, or party, his proper proportion and position; and all this with a view to interesting and instructing widely different classes of readers—and those, again, general and professional. To do all this effectually, requires powerful talents, much knowledge of life and character, practical acquaintance with the law of the country, sound judgment, and a vivid imagination. There is scarcely any point of view in which a great trial will not appear deeply interesting to a competent observer, watching how each individual plays his part in the agitating drama. Whether the judge hold the sacred scales even; whether he see clearly and act promptly, calmly, resolutely, in detecting fallacy, in order to shield an unsophisticated jury from its subtle and deleterious agency; whether, for this purpose, his intellect and his knowledge be superior, equal, or inferior to those of the advocates pleading before him. How those advocates conduct themselves, intellectually and morally; whether they be clear-headed, acute, ready, learned—or cloudy, obtuse, superficial, and ignorant; whether evenly or over-matched; whether they play the gentleman or the scoundrel; whether they will, however difficult the task, nobly recognise the obligations of truth and honour, or villanously disregard them, to secure a paltry triumph in defeating justice! How the witnesses discharge their momentous duties; whether constantly mindful of their oath, or forgetful of it, or wilfully disregarding it, from hostility or partiality to the prisoner, or any other wicked motive. Whether the judge, or the advocates, be equal to the discomfiture of a wicked witness. How the jury are conducting themselves—whether with watchful intelligence, or stolid listlessness. How the prisoner, standing in the midst of all these, with life, honour, character, liberty, everything at stake, and depending on the word which one of that jury

will utter,—how *he* is demeaning himself, knowing, as he does, the truth or falsehood of the charge on which he is being tried; what he may be thinking of the exertions of his counsel, of the temper and spirit of the witnesses, of the jury, of the judge; whether he advert at all to the spectators around him, and the feelings by which they are animated towards him; whether he be aware of, or appreciates, the true strain and pressure of the case—the sudden chances and perils occurring in its progress.

How striking and instructive to observe the abstract rules of justice brought to bear with readiness and precision, equally upon ordinary and extraordinary combinations of circumstances!—to witness the dead letter of the law become animated with potent vitality, for the regulation of human affairs!

Again, it has often occurred to us that there is another point of view from which important trials, nay, almost any trial, may be contemplated with lively interest, by a logical observer, with reference to the *use made of facts* by judicial and forensic intellect. How little even the acutest layman could have anticipated such dealing with facts as that which he here beholds; how he must appreciate the practised, watchful art with which the slightest circumstance is seized hold of, and in due time so combined with others with which it seemed, at first, to have no conceivable connection, as to justify conclusions exactly the reverse of those which had till then seemed inevitable! What totally different aspects the same facts may be made to wear, by different dealers with them, having different objects in view! By their different arrangement and combination, what unexpected inferences may be drawn from the self-same facts, and even when similarly arranged and combined! How exciting to see a defence constructed by experienced astuteness and eloquence, out of the slightest materials, out of a hopeless case, in the teeth of one really overpowering for the prosecution! The desperate determination, the ex-

quisite subtlety, the consummate judgment, often exhibited on such occasions by eminent advocates—struggling, too, at once with their own sense of right and wrong, and the desire to do their utmost for one who has intrusted his all to them—conscious, too, that though a jury of twelve plain common-sense people may be unable to see through the fallacies which are presented to them, it will doubtless be far otherwise with one who has to follow, who has the last word! and with that last word may at once lay bare the sophistries of forensic effrontery, and perhaps rebuke him who attempted to trifle with and mislead the understandings of those so solemnly sworn to give a just and true verdict, according to the evidence. “But what is one to do?” exclaims the anxious advocate. “How am I to defend yonder trembling being who has selected me to stand between him and—the scaffold, it may be—if I am to play the judge, and not the advocate; to yield pusillanimously to an array of fearfully plain facts, and make no attempt to square them with the hypothesis of my client’s innocence, or persuade a jury that they are, whatever my own secret opinion, pregnant with too much doubt to warrant a verdict of guilty?” Only one who has been placed in the situation can conceive the faintest idea of what is endured on such occasions by the sensitive and conscientious advocate; who is called upon in desperate emergencies, in moments of intense eagerness and anxiety, the spasms, as it were, of which are publicly exhibited, and before gifted and critical rivals and merciless public censors, to see and observe the delicate but decisive line of right—of duty; to maintain at once the character of the zealous, effective advocate, and the Christian gentleman.

If sufficient allowances were made for persons placed in such circumstances of serious embarrassment and responsibility, less uncharitable judgments would be passed on the manner in which advocates exercise their functions than are sometimes seen: judgments formed and pronounced, too, in

the closet—by those speaking after the event—calm and undisturbed by anxieties and agitation, which have probably never been personally experienced. This topic, however, we may hereafter treat more at large, in giving to the volumes before us that extended examination which is at present contemplated. They contain a series of trials of undoubted public interest and importance; and have been selected, upon the whole, judiciously, with a view to the end which the author had proposed to himself; though the propriety of the title which he has chosen—*i. e.* “*Modern State Trials*”—is not at first sight apparent. The idea conveyed by these words is, trials directly affecting the *State*, political prosecutions in respect of political offences. It is difficult to bring trials for murder, duelling, forgery, abduction, libel, blasphemy, and conspiracy, under this category; and this Mr Townsend felt. Such, nevertheless, constitute a large proportion of the trials contained in these volumes, and are, in our opinion, also those of most popular interest, and worthiest of being dealt with, as it was Mr Townsend’s expressed intention to deal with them.

The “trials” contained in the volumes before us are fifteen in number, of which only four, or at most five, (Mr Townsend seems to have thought six), have any pretensions to be designated “*State trials*.” These five are—John Frost, Edward Oxford, and Smith O’Brien for high treason; Daniel O’Connell, and eight others, for a treasonable conspiracy; and Charles Pinney, for alleged neglect of his duty as mayor of Bristol, during the fiery and bloody “Reform Riots,” as they were called, in that place, in October 1831. The remaining ten trials consist of two for duelling—the late James Stuart for killing Sir Alexander Boswell, and the Earl of Cardigan for shooting Captain Tucket; three for murder, (in addition to James Stuart, who was tried for the *murder* of Sir Alexander Boswell)—*viz.* Courvoisier, for the murder of Lord William Russell; M’Naughten, for the murder of Mr Drummond; Hunter and others,

for conspiracy and the murder of John Smith, the Glasgow cotton-spinner, in 1837; Alexander Alexander (the titular Earl of Stirling), for forgery; Lord Cochrane, and seven others, for a conspiracy to raise the funds; the Wakefields, for conspiracy, and abduction of an heiress; John Ambrose Williams, for a libel on the Durham Clergy; and Mr John Moxon, for blasphemy, in publishing the poems of Percy Bysshe Shelley. It will be observed that all these are *criminal trials*, and occurred in England, Scotland, and Ireland; affording thus a favourable opportunity for comparing the different methods of proceeding in their respective courts, and the characteristics of their respective judges and advocates. The English trials are ten, the Scottish three, and the Irish two in number: and whether they are precisely those which could have been most advantageously selected, it were needless for present purposes to inquire. Mr Townsend made his choice, and thus generally states his objects and intentions:—

“The present edition of ‘*Modern State Trials*’ is meant to include those of the most general interest and importance which have occurred during the last thirty years. None are inserted in these volumes which have been previously comprised in any collection; but the editor regrets want of space, which compels him to omit several not uninteresting. In making a selection, he has endeavoured to present a faithful, but abridged, report of such legal proceedings as would be most likely to command the attention of all members of the community, and to be read by them with pleasure and profit. This appears to be the popular description of the term ‘*State Trials*,’ in which Mr Evelyn and Mr Hargreave acquiesced, or they would not have included convictions for witchcraft, and the prosecution of Elizabeth Canning for perjury, in their collection. Were the definition restricted to political offences merely, the work, however logically correct, would be wanting in spirit and variety.”—(Introd. vol. i. p. 5.)

After stating that no technical objection can be raised to those of the above trials which immediately affect the State, he observes, that, "for the propriety of inserting the rest under the same title, a just apology may be made." The trial of the Earl of Cardigan, before the House of Lords, is represented as interesting, from the rank of the accused and from the rarity of the trial, as being the first time that duelling was attempted to be brought within a recent statute, (1 Vict. c. 85), enacting that the shooting at a person, not with premeditated malice, but deliberately, and causing a bodily injury dangerous to life, should be a capital offence; and that whoever should shoot any person with intent to commit murder, or to do some grievous bodily harm, should, though no bodily harm were inflicted, be guilty of *felony*, and liable to transportation or imprisonment. The social position of the titular Earl of Stirling, and the extraordinary nature of the evidence, are said to justify the insertion of *his* trial; while, "in the records of criminal jurisprudence, there occur few proceedings of more deep and painful interest than the prosecution of Lord Cochrane, for conspiracy to commit a fraud on the Stock Exchange." The two cases of Courvoisier and M'Naughten respectively "involve topics of absorbing interest at the period of the occurrence, and of enduring interest to all time: in the one being involved the rights and duties, the privileges and immunities of counsel for prisoners; in the other, the fearful question of responsibility for crime—whether moral insanity, alone, may exonerate the alleged subject of it from the temporal consequences of his guilt." This latter topic is also involved in Oxford's case. The trials of Mr Stuart for killing Sir Alexander Boswell, and of Mr Moxon for blasphemy, are inserted for one and the same reason—namely, "a desire to embalm the very beautiful speeches of Lord Cockburn, Lord Jeffrey, and Mr Justice Talfourd." As to the trial of Ambrose Williams, it is inserted on account of the celebrated

speech in defence by Lord Brougham—"one of the most vivid specimens extant, in either ancient or modern literature, of keen irony, bitter sarcasm, and vehement vituperation." The prosecution of the Wakefields for conspiracy, and the abduction of Miss Turner, "forms a singular chapter in legal history; interesting not less to the student of human nature, on account of its characters and incidents, than to the lawyer, for the elaborate discussions on the Scottish law of marriages, and the right of the wife, even should there have been a legal marriage, to appear as a witness against the offending husband—matters argued with profuse learning and ability."

"In setting forth, under a condensed form," says Mr Townsend,* "this and the other most interesting trials of our time, it has been the object of the editor to free the work from dry severity by introducing the '*loci laetiores*' of the advocates, the salient parts of cross-examination—those little passages of arms between the rival combatants which diversified the arena, the painting of the forensic scene, the poetry of action of these legal dramas. He has sought to give the expressed spirit of eloquence and law, upon occasions which peculiarly called them forth; pruning what was redundant, rejecting superfluities, weeding out irrelevant matter, but omitting no incident or episode that an intelligent witness would have been disappointed at not hearing."

We present the ensuing paragraph, which immediately follows the preceding, because it will afford us an opportunity of making a remark applicable to the entire structure of the work before us.

"In the extracts here given from some of the most celebrated speeches of modern days, the editor has also had the great advantage of the last corrections of the speakers themselves, and has thus been enabled to preserve the *ipsissima verba*, by which minds were captivated and verdicts won; those treasures of oratory which would

* Introduction, vol. i. pp. 7, 8.

have gladdened the old age of Erskine, could he have seen how his talisman had been passed from hand to hand, and the mantle of his inspiration caught. The vivid appeals of Whiteside, the magnificent defence of Cockburn, the persuasive imagery of Talfour, will exist as *αἰῶνα ἰσὺς αἰ*—trophies of forensic eloquence, beacon lights, it may be, in the midst of that prosaic mistiness which has begun to creep around our courts."

The remark to which we have alluded is this: that the work before us is pervaded by a tone of uniform, excessive, and undistinguishing *eulogy*; which, however creditable to the amiable and generous dispenser of it, is calculated to lower our estimate of his critical judgment, and even, unless one should be on one's guard, to provoke a harsh and disparaging spirit towards the subjects of such undue eulogy, and a suspicion that here "praise undeserved"—and the remark is applicable equally to praise excessive—"is censure in disguise!" No judge, no counsel, can say or do anything, in the course of any of the trials here brought under our notice, without speaking and acting in such a way as to merit applause for exhibiting the highest qualities of mind and character! Let it not be supposed, that, in making these observations, we wish to apply them to the particular instances cited by Mr Townsend of Messrs Whiteside, Cockburn, and Talfour—all of whom are distinguished, accomplished, able, and eloquent advocates; but we believe that each would, in spite of the fondest self-love, in his own mind, somewhat mistrust his title to the amount of applause here bestowed upon him. What more than he has said of them, could he have said of the greatest orators and advocates whom the world has produced? In a corresponding strain, Mr Townsend speaks of every one, senior and junior counsel, and every writer, great and small, whom he has occasion to mention. Those who knew him, and appreciated his simple and manly character, will refer the defect which we have felt compelled thus to

point out, to its true cause—the kindness of his heart; and we believe that, had he lived to see these observations, his candour would have caused him promptly to recognise their justice.

Each of the trials is preceded and followed by "Introductory Essays" and "Notes."

"The Essays, chiefly historical, have been introduced in order to familiarise the reader with the subject, and prevent the monotony which, but for these occasional dissertations, might pervade so many recurring trials. The notes are added with a similar object."* We may say generally, that these "Essays" and "Notes" always display judgment, and the writer's complete knowledge of his subject. No reader should enter on the trial, without carefully perusing the "Essay" which ushers it in, shedding light upon all its details, and the circumstances attending the committing of these offences, indicating, with distinctness, the leading features of interest and importance. In the report of the trial itself, great pains have evidently been taken, and successfully, to observe rigid impartiality, and secure accuracy of statement; and the conflicts of counsel with each other and with witnesses—the temperate, and timely interpositions of the judges, and their satisfactory summings-up to the jury, are presented to the reader with no little vividness. The fault of Mr Townsend's style is, diffuseness, a tendency to colloquiality, and a deficiency of vigour. With these little exceptions, added to that above noticed, we have no hesitation in commending these volumes as an acquisition to popular and professional literature, reflecting credit on the author's memory, and the Bar to which he belonged.

Having thus briefly indicated the general character of this work, and given the author's own account of it, we propose in the present, and few following articles, to take our own view of some of the leading "Trials" thus collected by Mr Townsend, incidentally observing on his treatment

* Introduction, p. ix.

of the subject. With him, we regard several of these trials as exhibiting features of remarkable interest; and are much indebted to him for having so disposed his materials as to rouse and rivet the attention of all classes of intelligent readers, but in an especial degree that of the youthful student of jurisprudence. Without further preface, we shall commence with that which stands first in Mr Townsend's collection—the trial of Frost, for high treason.

This affords a very favourable specimen of Mr Townsend's capabilities. He appears to have worked it out perhaps more exactly to his own idea, than any of the ensuing ones; and, by his able and judicious treatment of the subject, has given us an opportunity of exhibiting in glowing colours a forensic battle-field: the stake, life or death; the combatants, evenly matched, the very flower of the Bar; their tactics clear and decisive, with the odds tremendously against one party—that is to say, facts too strong for almost any degree of daring or astuteness to contend against hopefully. Let us see, under such circumstances, how the combatants acquitted themselves; or, if one may change the figure, let us see how was played a great game of chess on the board of life, by skilful and celebrated players. Who were they? Four in number—Sir John Campbell and Sir Thomas Wilde, then respectively Attorney and Solicitor-General, representing the Crown; Sir Frederick Pollock and Mr Fitzroy Kelly, Queen's Counsel for the prisoner. Ten years have since elapsed, and behold the changes in the relative positions of these gentlemen! Sir John Campbell is a peer of the realm, and Chief-Justice of the Queen's Bench: having also, during the interval, become a laborious and successful biographer of the Lord-Chancellors and Chief-Justices of England. Sir Thomas Wilde is also a Peer of the realm, and became Lord High Chancellor, having been previously Attorney-General and Chief-Justice of the Common Pleas. Sir Frederick Pollock, having been subsequently appointed Attorney-General,

is now Chief-Baron of the Exchequer; while Mr Kelly, having since become Solicitor-General, lost office on the break-up of Sir Robert Peel's ministry, and remains—such are the chances and changes of political life—plain Sir Fitzroy Kelly, but occupying a splendid position at the Bar. These four were the leading counsel; but besides the Attorney and Solicitor-General, the Crown was represented by two gentlemen of great legal learning and eloquence, since raised to the Bench—Mr Justice Wightman and Mr Justice Talfourd;* and by Mr Sergeant Ludlow, since become a Commissioner of Bankruptcy; and the Hon. John C. Talbot, now so highly distinguished in Parliamentary practice.† The judges sent as the special commission consisted of the late Chief-Justice Tindal, the present Mr Baron Parke, and the late Mr Justice Williams, forming, it is superfluous to say, an admirably constituted court—the chief being consummately qualified for his post by temper, sagacity, and learning.

It was the business of the Attorney and Solicitor-General to establish a case of high treason against the prisoner, and of Sir Frederick Pollock and Mr Kelly to defend him *à l'outrance*; but God forbid that we should say *per fas aut nefas*. It were idle to characterise the intellectual and professional qualifications of these four combatants; the eminence of all is undisputed, though their idiosyncrasies are widely different from each other. Suffice it to say, that everything which great experience, sagacity, learning, power, and eloquence could bring to bear on that contest might have been confidently looked for. One circumstance is proper to be borne in mind—that the prisoner's counsel (of course, abhorring the acts imputed to their client) were stimu-

* The sudden, affecting, and awful death of this amiable, gifted, and accomplished judge, while in the act of charging a Grand Jury at Stafford, occurred in the Spring Sessions of 1854.

† Mr Talbot died almost suddenly, about two years after this article was written, worn out by his labours as the leading member of the Parliamentary Bar.

lated to the uttermost exertion by the fact that their own political opinions were notoriously adverse to those entertained by the prisoner, and those, viz., Chartists, who so confidently summoned two Tories to the rescue of their imperilled brother Chartists.

All the main facts of the case were universally known before the trial took place, together, of course, with the legal category to which they must be referred, to satisfy the conditions of high treason. The nature of that offence was thus tersely and beautifully explained by the Chief-Justice.*—

"Gentlemen, the crime of high treason in its own direct consequences, is calculated to produce the most malignant effects upon the community at large; its direct and immediate tendency is the putting down the authority of the law, the shaking and subverting the foundation of all government, the loosening and dissolving the bands and cement by which society is held together, the general confusion of property, the involving a whole people in bloodshed and mutual destruction; and, accordingly the crime of high treason has always been regarded by the law of this country as the offence of all others of the deepest dye, and as calling for the severest measure of punishment. But in the very same proportion as it is dangerous to the community, and fearful to the offender from the weight of punishment which is attached to it, has it been thought necessary by the wisdom of our ancestors to define and limit this law within certain express boundaries, in order that, on the one hand, no guilty person might escape the punishment due to his transgression by an affected ignorance of the law; and, on the other, that no innocent man might be entangled or brought unaware within the reach of its severity by reason of the law's uncertainty."

The following were fearful words to be heard, or afterwards read, by those who were charged with the defence of Frost. They occur, like the preceding passage, in the luminous charge of the

* TOWNSEND, vol. i. pp. 1, 2.

Chief-Justice to the Grand Jury, on the 10th December 1839:—

"An assembly of men, armed and arrayed in a warlike manner, with any treasonable purpose, is a levying of war, although no blow be struck; and the enlisting and drilling and marching bodies of men are sufficient overt acts of that treason, without coming to a battle or action. And, if this be the case, the actual conflict between such a body and the Queen's forces must, beyond all doubt, amount to a levying of war against the Queen, under the statute of Edward. It was quite unnecessary to constitute the guilt of treason that the tumultuous multitude should be accompanied with the pomp and pageantry of war, or with military array. Insurrection and rebellion are more humble in their first infancy; but all such external marks of pomp will not fail to be added with the first gleam of success. The treasonable design once established by the proper evidence, the man who instigated, incited, procured, or persuaded others to commit the act, though not present in person at the commission of it, is equally a traitor, to all intents and purposes, as the man by whose hand the act of treason is committed. He who leads the armed multitude towards the point of attack, and then retires before the blow is struck—he who remains at home planning and directing the proceedings, but leaving the actual execution of such plans to more daring hands—he who, after treason has been committed, knowingly harbours or conceals the traitor from the punishment due to him,—all these are equally guilty, in the eye of the law, of the crime of high treason."

The head of treason applicable to the facts of the case under consideration is the third, in statute 25 Edward III. c. 2, which concisely declares it to exist "if a man do *levy war* against our lord the King in his realm." This has been the law of the land for just five centuries, i. e., since the year 1351. But in the application of these words, of fearful significance, the object with which arms are taken up must be a GENERAL ONE—"the univer-

salutary of the design making it a rebellion against the state, a usurpation of the power of Government, and an insolent invasion of the King's authority—"under pretence to reform religion and the laws, or to remove evil counsellors, or other grievances, whether real or pretended."* Or, to adopt the definition of Mr Kelly, in addressing the jury in this very case, it is necessary to prove "that the prisoner levied war against her Majesty, with intent by force to alter the law, and subvert the constitution of the realm."† To appreciate the position of the prisoner, and the difficulties with which his counsel had to struggle, it may here be mentioned, that he admitted the prisoner to be a Chartist, as it was called—that is, a supporter of the following five points of sweeping change in the political institutions of the country—"Universal suffrage, vote by ballot, annual parliaments, no property qualification, and payment of members of parliament." This was also, during the trial, avowed by the prisoner.‡

Having thus got a clear view of the law, let us briefly indicate the *facts*—the palpable, notorious, leading facts, known to be such by the prisoner's counsel, as soon as they had perused their briefs.

A body of ten thousand men, principally miners from the surrounding country, headed, in three divisions, by Frost, and two other men, Jones and Williams, Frost having five thousand under his command, and armed indiscriminately with muskets, pikes, axes, staves, and other weapons, was to make a descent upon the peaceful town of Newport, during the night of Sunday, the 3d November 1839! Tempestuous weather prevented the preconcerted junction of these three bands; but, between eight and nine o'clock on the Monday morning, Frost's division, five thousand strong, marched into the town—and headed, after a fashion, by him, commenced an attack upon a small inn, where they knew that a handful of troops was stationed,

about thirty in number, under command of a lieutenant. As soon as the mob, who formed steadily, saw the soldiers drawn up in the room, the windows of which were thrown open, they cruelly fired into it, and also rushed through the doors into the passage. On this, the lieutenant gave the word of command to fire. He was obeyed—and with deadly effect, as far as regarded some thirty or forty, known to have received the fire, many of whom were shot dead on the spot. But this cool promptitude and determination of the troops put an end *instantly* to the insane insurrection. This vast body of supposed desperadoes fled panic-struck in every direction; and Frost himself, who was unquestionably on the very spot, at the very time, when and where the attack commenced, fled in ridiculous terror,§ and was arrested that evening at a friend's house adjoining his own, armed with three loaded pistols, and having on him a powder-flask and a quantity of balls. His brother heroes, Williams and Jones, were also arrested, together with many others; and there ended the formidable outbreak, which had more astounded than alarmed the public; leaving, however, the instigators and conductors to a speedy and dismal reckoning with that same public. The active management of matters by Frost was beyond all doubt, and it seemed never to have been wished to conceal it. He was the Jack Cade of the affair. He planned the order of march; the time, place, and mode of attack; and explained the immediate and ulterior objects of the movement. Shortly before the outbreak, he was asked by one of his adherents, "*what he intended to do?*" He answered—

"First, they should go to the new poor-house, and take soldiers and arms; then, he said, there was a storehouse, where there was plenty of powder; then, they would blow up the bridge, that would stop the Welsh mail which did run to the north, and that would be tidings; and they would commence

* 4 BLACK. Com. 81-2.

† TOWNSEND, vol. i. p. 54.

‡ Ibid. 45.

§ "I thought he was crying," said one of the witnesses!—P. 23.

there in the north on Monday night, and he should be able to see two or three of his friends or enemies in Newport."—Vol. i. p. 36.

Similar observations he made to another of his followers, who asked him, on hearing him give orders for the guns to take the front, the pikes next, the bludgeons next—"in the name of God, what was he going to do? was he going to attack any place or people?" he said—

"He was going to attack Newport, and take it—and blow up the bridge, and prevent the Welsh mail from proceeding to Birmingham: that there would be three delegates there, to wait for the coach an hour and a half after the time; and if the mail did not arrive there, the attack was to commence at Birmingham, and be carried thence to the North of England, and Scotland, and that was to be the signal for the whole nation."—I. p. 33.

The coal and iron trade in these parts, from which the population derived their subsistence, had seldom been more prosperous than at the time when this preposterous movement was concerted and made: employment was easily obtained; wages were high; and those concerned in the affair had no private grievances to redress. At the same time, it was notorious that political agitation, on the subject of the Charter aforesaid, had for some time prevailed there; that the population had been organised for combined and effective action by affiliated societies; and Frost, the prime mover—a pestilent agitator, who, occupying the position of a decent tradesman, a linendraper, in Newtown, had been rashly raised to the local magistracy, from which he was soon degraded for sedition—declared his object to be, to make the Charter the law of the land. All these, and many other facts, which had been elicited during the preliminary examinations, were known to the prisoner's counsel, who had copies of all the depositions which had been made by the witnesses; and also knew the precise terms in which the indictment was framed, and the name, calling,

and residence of every witness to be produced in proof of that indictment.

How was this towering array of facts to be encountered, with these enlightened judges to conduct the inquiry, and guide the jury, and very able and determined counsel to elicit and arrange those facts, and enforce them on the jury—and *have the last word* with the jury in so doing? We may well imagine how anxious and disheartening were the consultations of the prisoner's counsel, before going into court. Neither they, nor their attorneys, could disguise from themselves the desperate nature of the case in which they were concerned. They would probably determine to cross-examine the witnesses cautiously and rigorously, with a view to breaking down important links in the case; and it is likely that their paramount object in conducting the defence, would be to aim at supplying Frost with some other than a *general object*—something else than establishing the Charter as the law of the land. A hopeful prospect! But besides all this, it must have been determined, of course, to throw no single chance away, whereon—however, whenever it presented itself—to fight the fearful case for the Crown inch by inch, and foot by foot—contesting every technical point, with a view to detecting any possible slip in either the preliminary or any other part of the proceedings of the experienced and watchful Crown officers. Here, again, was a hopeful prospect! Their proceedings had been doubtless advised beforehand by the Attorney and Solicitor-General, and conducted by Mr Maule, the Solicitor of the Treasury, in person—himself a barrister, and perfectly qualified for his post. He was also a humane man; always anxious to discharge his duties firmly, but at the same time to afford a prisoner every degree of consideration and indulgence consistent with the public interest.

By this time the reader may be aware how very serious a thing is the conduct, on the part of the Crown, of a prosecution for high treason, in every one of its stages—in the slightest par-

ticulars—especially where the great *facts* of the case are so clear against the prisoner, as to compel his advocate to watch and test every link in the chain fixed around his client. Here, in fact, correlative duties are cast on the opposing parties—to *take* every possible objection; and to be beforehand *prepared* for every possible objection, by vigilant exactitude in complying with every legal requisite.

It is important, now, to bear in mind the *dates* immediately following.

On the *eleventh* day of December 1839, the Grand Jury returned a true bill for high treason against John Frost and thirteen of his followers; and on the very next day, viz., Thursday the *twelfth*—in order to oblige the prisoner, by giving him the longest possible time for availing himself of the important information contained in the *indictment*, and the *jury list*—copies of these instruments were delivered to him by the Solicitor of the Treasury. On the ensuing Tuesday, the 17th, he delivered to the prisoner a *list of the witnesses*; and, the trial having been appointed to take place on the 31st December, five days previously to the latter day—viz., on the 26th December—Sir Frederick Pollock and Mr Kelly were assigned to John Frost, as his counsel, on his application, pursuant to the statute, to Mr Bellamy, the clerk of the Crown. It is here essential, in order to appreciate the immense importance of the earliest moves in this life-and-death game, to weigh every word in the following brief enactment, under which the above documents were delivered to the prisoner: the humane object of the legislature being to afford him ample time to prepare his defence:—“When any person is indicted for high treason, a list of the *witnesses*, and of the *jury*, mentioning the names, profession, and place of abode of the said witnesses and jurors, shall be also given at the same time that the copy of the indictment is delivered to the party indicted—which copy of the indictment shall be delivered ten days before the trial.”* Thus it will be seen

that, as the trial was to take place on Tuesday the 31st December, Mr Maule might have delayed delivering these documents to the prisoner till the 20th, and perhaps till the 21st December; but, solely to favour the prisoner, he delivered two of them—viz., the indictment and jury list—so early as the 12th, and the list of witnesses so early as the 17th December. Let us see by-and-by, whether anything comes of this, and of the lengthened study, by the prisoner's astute and experienced counsel, of these three documents.

On Tuesday the 31st December 1839, all the fourteen prisoners were arraigned on an indictment consisting of four counts: two for levying war against her Majesty in her realm; a third for compassing to depose the Queen from her royal throne; and the last, for compassing to levy war against the Queen, with intent to compel her to change her measures. To this indictment each of the fourteen prisoners pleaded not guilty; and it is to be particularly observed that they all did so without making any objection, on any score. Thus was taken the first move by the Crown counsel, who may possibly, for aught we can at present see, have thereby gained some great advantage. Let us now conceive the solemnly-exciting scene of the court-house at Monmouth, on this memorable trial. Three judges sitting, in their imposing scarlet and ermine vestments, calm and grave; a phalanx of counsel sitting beneath them; the prisoners standing at the bar, on their deliverance, silent as the grave, while the fate-fraught procedure of the court is methodically going on; the spectators crowding every part of the court that they can occupy, and all silent, nothing heard but official voices; while without that court all is excitement—repressed, however, by the stern presence of the civil and military power; detachments of troops at that moment scouring the adjacent hills in quest of malcontents, and preventing any fresh rising of the population.

The first step taken by the prison-

* Stat. 7 Anne, c. 21, § 11.

er's counsel was to state that they appeared for John Frost alone, and should challenge the jury separately: on which all the other prisoners were removed from the bar, John Frost remaining to take his trial alone. Then came the swearing of the jury—the name of every one, with his calling in life, and place of abiding, being known to the prisoner and his counsel, who objected to the very first step taken by the clerk of the Crown. He had begun to call over the names in their alphabetical order on the panel—the usual course for a great series of years; but Sir Frederick Pollock objected to his doing so, insisting on each juror's name being taken from the ballot-box. The Chief-Justice was about to have overruled the objection; but the Attorney-General intimated that he consented to the course proposed by the prisoner's counsel. Each witness was sworn first on the *voir dire* (i. e., *dicere verum*), as to his qualification, before he was sworn to try. First came a jurymen, who was challenged peremptorily on the part of the Crown; but the prisoner's counsel, doubtless for very good reasons, wishing him to remain on the jury, insisted, first, that the Crown had no such right—an objection at once overruled; secondly, that the Crown was too late, as the juror had actually got the New Testament into his hand to be sworn to try, before the Crown challenged. But on the court's inquiry, it turned out that the witness had himself taken the book, without having been directed to do so by the clerk of the Crown. Under these circumstances, the court decided that the Crown were in time with their challenge—and the jurymen was excluded. In this kind of out-skirmishing the whole of the first day was consumed!—a full jury not having been sworn till the evening, when they were “charged” with the prisoner, and then dismissed for the night—but with the unpleasant information from the court, that they themselves were thenceforth prisoners, though with every kind of proper indulgence, till the trial was over.

On the next morning, just as the Attorney-General was rising to state the case for the crown, he was interrupted by Sir Frederick Pollock, and doubtless sufficiently astonished by what fell from him: “I feel myself bound, at the earliest moment, and this is the first opportunity that I have had, to take an objection which must occur the moment that the first witness is put into the box,—namely, that the prisoner has never had a list of the witnesses, pursuant to the statute, and that therefore *no witness can be called!*” What could be the meaning of this? inquired the Attorney-General's companions among themselves, with no little anxiety; but he himself somewhat sternly censured the interruption, as premature, as it certainly was, and proceeded with his address to the jury. He made a lucid and temperate statement of the case, drawing attention prominently to the necessity imposed on him of proving that what had been done by Frost and his companions was with a *general*, and not a particular object,—a *public*, and not a private purpose. His proposed proof was crushing: but immediately on the Solicitor-General's calling the name of the first witness, Sir Frederick Pollock rose, and required him to prove the delivery of a list of the witnesses, containing the particular one in question, pursuant to the statute. The Attorney-General then called Mr Maule, who proved having done what has already been explained: whereupon Sir Frederick Pollock disclosed the exact objection, which he himself had been the first to detect, that whereas the statute required all these documents, i. e., the indictment, the jury list, and witness list, to be delivered “*at the same time*,” in the present instance that had not been done, the first two having been delivered on the 12th, and the list of witnesses on the 17th December! This was a formidable move on the part of the prisoner: who stood at the bar on his deliverance, the jury being bound to convict or acquit according to evidence, and if this objection

should prevail, none could be offered them! If that *were* so, he must of necessity be pronounced not guilty, and be for ever safe. The objection was urged with extreme tenacity and ingenuity by both the prisoner's counsel, who insisted on the statute of Anne receiving a strict literal construction of the words "at the same time," admitting the benevolent intentions by which Mr Maule had been actuated. The Attorney-General argued very earnestly against this startling objection, denying that it had any validity; asserting that the statute had been substantially complied with; that the objection, if valid, had been waived; and that it was made too late—viz., not till after the prisoner had pleaded to the indictment, and the jury been charged with the prisoner. The Attorney-General's astute argument, however, was interrupted by the Chief-Justice stating that the court had a sufficient degree of doubt on the point to reserve it for further consideration by the Judges at Westminster, should it become necessary: for, if their objection were valid, it affected every one of the fourteen prisoners awaiting their trial!

Then came another desperate attempt of Sir Frederick Pollock, to secure his client the benefit of an *acquittal*, in the event of the Judges ultimately deciding that the objection ought to have been decided in the prisoner's favour at the trial. This, however, the Attorney-General again strongly opposed; and the court cautiously ruled, that, in the event contemplated, the prisoner would be entitled then to the same benefit to which he would have been entitled at the trial, without saying what that would have been. The witness thus provisionally objected to was then admitted; but only to be, at first, sworn on the *voir dire*, on which a lengthened examination and some argument ensued; each of the Judges delivering judgment on the excessively refined and astute objection to the manner in which the witness's place of abode had been described in the

list—which was such as that it was just imaginable, and nothing more, that an inquirer might have been misled! The objection was overruled in the case of the first witness; but on the ensuing two witnesses, and most important ones, being called, a similar objection was taken, but too successfully, and their evidence, consequently, altogether excluded!—excluded solely on account of the anxious "*over-particularity*" of the Crown! Nor were these the only witnesses whose testimony was, on such grounds, rendered unavailable to the Crown.

Then came the usual contests, from time to time, as to acts and declarations of third parties, which were offered as evidence against the prisoner, though done and said in his absence, and before and after the actual outbreak—viz., to what extent he had rendered himself liable for the consequences of such acts and declarations, by embarking in a common enterprise, having a common intent with these third parties. The result of such contests was practically this,—The court acted on the rule of law, as well established, that in treason and conspiracy, the Crown may prove either the conspiracy, which renders admissible as evidence the acts and declarations of the co-conspirators; or the acts and declarations of the different persons, and so prove the conspiracy. A witness, for instance, said that he was at a party at a Chartists' lodge on the 2d November, when a man named *Reed* gave them directions to go to Newport on the following night, and explained for what purpose they were to go; but the witness did not see Frost till two days *afterwards*, when on his march to Newport. The Chief-Justice overruled the objections of Sir F. Pollock and Mr Kelly, and received the evidence which they had attempted to exclude.

A great mass of proof was given during the trial, establishing satisfactorily the acts and doings of Frost, throughout the progress of the conspiracy, and down to the very moment of the actual attack on the inn, and the Queen's troops stationed in it—a mass

of proof on which the attempt to make an impression seemed absurd.

There was only one faint ray of hope for the prisoner's counsel throughout the palpable obscure—that they might be able to escape from the generality and publicity of object attributed to the prisoner, by persuading the jury that the object was a private, temporary, and specific one—viz., to effect the release of one Vincent, a Chartist, then in confinement at Monmouth! To pave the way for this hopeful line of defence, first, an artful turn was sought, in cross-examination, to be given to the evidence of one of the early witnesses. He swore that he had heard one of those who attacked the inn, exclaim at the time, presenting his gun at one of the special constables at the door, “Surrender *yourselves* our prisoners;” to which the gallant answer was, “No, never!” On this Mr Kelly warily cross-examined the witness, with a view of showing that, in the confusion, he could not hear distinctly, so as to report distinctly, as to precise expressions; that the mob intended merely to rescue Vincent; and that the expressions used must have been, not “Surrender *yourselves* our prisoners,” but “Surrender up our prisoners!” or simply, “Surrender our prisoners,”—thus rejecting, from the witness's answer, the single significant word “yourselves.” The attempt, however, was wholly ineffectual; but out of two other witnesses were extorted, on cross-examination, the following, so to speak, crumbs of comfort: from one—“I have heard Vincent's name mentioned many times; I have heard Williams, one of the leaders of the three bands forming the ten thousand, say that Vincent was a prisoner at Monmouth: the people there liked him very much; the people knew he was in gaol. I have heard them speak about him.” Another witness said, “I knew of Vincent's being sent to prison: I believe the Chartists took a great interest in his fate: I do recollect something of dissatisfaction about Vincent's treatment, and about a petition to be drawn up: I recollect people's minds being dissatisfied about it.”

Another witness, however, deposed, “that at midnight on the Sunday, the 3d November, Williams came to his house with a number of armed men:” the witness inquired, “Where are you going?” “Why do you ask?” said Williams. “Because,” answered the witness, “some of the men who were with me, have told me, this morning, that they were going to Monmouth, to draw Vincent out of prison.” “No,” replied Williams, “*we do not attempt it*: we are going to give a turn as far as Newport.”

The Attorney-General closed his case with the arrest of Frost, heavily armed, and in concealment, on the evening of the day on which he had attacked the inn with his five thousand men; and thus stood the matter, when, after a considerable interval for repose and reflection, courteously conceded by the Chief-Justice, at the implied request of Sir Frederick Pollock, that able and upright advocate rose to address the jury for the defence. Judging from the specimens afforded us by Mr Townsend, Sir Frederick Pollock's address appears to have been pervaded by a strain of dignified and earnest eloquence, and also characterised by a candour in dealing with facts which was in the highest degree honourable to him, and also equally advantageous to the prisoner, on whose behalf such conduct was calculated to conciliate both the judges and the jury. His line of defence was, that, admitting enormous indiscretion on the part of Frost in assembling so vast a body of men, and marching and appearing with them as he did at Newport, there was no satisfactory evidence of his having done so with a *treasonable* purpose. He had been guilty of a heinous misdemeanour; but the treasonable declarations and exclamations, put into his and their mouths, in order to give the affair a treasonable complexion, had been either misunderstood or perverted by the witnesses. The sole object of Frost and his friends was the release of Vincent; that they had never dreamed of taking, or attacking the town of Newport—least of all, as an act of general rebellion; that all they had

meant was to take a "turn" as far as Newport, to get Vincent out of prison; and that "that was the true character of the whole proceedings;" that Frost did not know that the military were in the inn; and that, the instant they had become visible, and had fired, the crowd succumbed, threw down their arms, and ran away—i. e., they did this "the very moment there was any prospect of what they were doing being construed into treason." That Frost could not have contemplated treason, and throwing the whole country into confusion, would be evidenced by proof, and his having made provision for the payment of a bill of exchange, and actually paying it on the very Monday on which the outbreak occurred. Sir Frederick Pollock properly insisted on the burthen of proving treason lying on the Crown, and not of disproof on the prisoner. Then were called one or two witnesses, with a view to showing expressions of the crowd that they had come to Newport in quest of their prisoners who were there; but the evidence proved ridiculously insufficient and contradictory. Then was read, with the Attorney-General's consent, a letter of Frost's in the previous September, to one of the visiting magistrates of the gaol of Monmouth, requesting some relaxation of the prison discipline to which Vincent and other prisoners were subject; and it appeared, also, that a similar application had been made to the Lord-Lieutenant of the county. Then was proved Frost's having taken up his acceptance on the 4th November; and his character for humanity as specially instanced in his having protected Lord Granville Somerset from personal violence during the Reform riots of 1832. Finally was called a witness, with the view of negating the design imputed to Frost of preventing the Welsh mail from going to Birmingham, by showing the absurdity of that course, since a new and different mail started from Bristol to Birmingham, and not the same coach which had come from Newport. But to this witness were quietly put the following signifi-

cant, and probably unsuspected, questions:—

"*Attorney-General.*—You took an interest, I suppose, in Vincent? *A.* I did so.

"*Attorney-General.*—You had not been told that there was to be any meeting for Vincent on the 4th of November, had you? *A.* No.

"*Attorney-General.*—You, living at Newport, can tell us that there was no notice by placard, or in any other way, of a meeting to be held on the 4th November? *A.* I never saw any.

"*Attorney-General.*—Nor heard of any? *A.* No."

Such was the meagre case in behalf of the prisoner in point of evidence. And at its close, his second counsel, Mr Kelly, rose to address the jury on his behalf—a privilege accorded to no prisoner, except one tried on a charge of high treason. We shall present the reader with an extract from the opening passage in Mr Kelly's address, inasmuch as it is highly characteristic of that eminent counsel's style of advocacy, his imposing display of fervent confidence in his case, his terse and nervous expression, and the clearness and precision of his reasoning. We have some ground for believing that the following is exactly what fell from his lips:—

"The Attorney-General, in his opening, seemed to anticipate that we might deviate from the straight and honourable course before us, in defending the prisoner, into something like an attempt to induce you to depart from the strict letter of the law. So far from this, it is in the law, in the strict undeviating performance of the law, that I place my hope, my only trust. It is my prayer, therefore, that you should follow it; that you should be guided and governed by it; that you should attend and adhere to the law, and to the law alone; because I feel that, by that law, I shall prove to you clearly and satisfactorily, that the prisoner, whatever may have been his misconduct in other respects, however high the crimes and misdemeanours for which in another form he might have been indicted or pun-

shed—I feel that, by the law of high treason, he is as guiltless as any one of you, whose duty, I hope, it will soon be so to pronounce him. Gentlemen, if the prisoner at the bar be at this moment in any jeopardy or danger, it is from the law not prevailing, or not being clearly and perfectly understood. It is because the facts, which are in evidence before you, undoubtedly disclose a case of guilt against him; because they do prove that he has committed a great and serious violation of the law; because he has subjected himself to indictment and to punishment, that the danger exists—a danger from which it is for me, by all the humble efforts I can command, to protect him—that you, finding that he has offended against the justice of the country, should condemn him, not for the misdemeanour which he has really committed, but for the great and deadly crime with which he is charged by this indictment. I therefore, gentlemen, beseech your calm and patient attention, while I endeavour, as shortly, as concisely, and, I will venture to add, as fairly and candidly as I can, to lay before you, subject to the correction of their lordships, the law, as it affects this high and serious charge. And if I should be fortunate enough to do so, I undertake then to satisfy you—to convince the most doubting among you, if there be any more doubting than the rest, when I shall refer you to the testimony of the witnesses—that this charge is not only not proved, but that it is absolutely and totally disproved, even by the evidence for the prosecution. The question here is,—not whether a great and alarming riot has been committed; the question is, not whether blood has been shed, whether crimes, which are, as they ought to be, punishable by law, have been perpetrated by many who may be the subjects of this indictment; but the question is, whether the prisoner at the bar has, by competent legal proof, been proved, beyond all reasonable doubt in the mind of any one of you, to have levied war against her Majesty, with the trea-

sonable intent which is stated in this indictment? The Crown must satisfy you that the prisoner at the bar has levied war: that he has levied war against her Majesty—that is, that he has conducted these armed multitudes and committed, if he has committed, outrages with them, and concerted with them, or engaged them, to commit them; and not merely that he has done all these acts, but that he has done them against the Queen, that he has levied war against the Queen and her Government. And then, further, it must be proved to you that that was done with the intent, with the design, which is stated in this indictment.”—(I. pp. 52, 53.)

Mr Kelly’s speech was long, elaborate, eloquent, and most ingenious, adhering closely to the line of defence taken by Sir Frederick Pollock; pressing on the jury, in every possible way, with many varied illustrations, the improbability of Frost having contemplated the rebellious objects imputed to him, and the alleged certainty that his only view had been the rescue of Vincent. He vehemently assailed the credibility of those witnesses who had given the strongest evidence against Frost; and concluded with a most impassioned appeal to the feelings of the jury. When he had concluded, the Chief-Justice accorded still another privilege to Frost—viz., that of himself then addressing the jury, after both his counsel had done so; to which Frost prudently replied—“My lord, I am so well satisfied with what my counsel have said, that I decline saying anything upon this occasion.”*

The Solicitor-General then rose to reply on the part of the Crown; and if any one inexperienced in forensic contests were incredulous as to the potency of the *last word*, from competent lips, in any case, civil or criminal, let him read the outline of this reply, with the copious specimens of it, given with much judgment, by Mr Townsend. It is true that Sir Thomas Wilde’s case was in itself crushing, but his dealing with it made that

* TOWNSEND, vol. i. p. 71.

crushing character fearfully clear to the plainest capacity. Its opening passages seemed tinged by some sternness of allusion to the concluding topics of Mr Kelly's address; but the remainder of the reply is characterised by mingled moderation and power; by irresistible closeness and cogency of argument, and by extraordinary skill in dealing with facts, in combining and contrasting them, and pointing out a significance lurking in them, which the prisoner's counsel had possibly not chosen to see, or skilfully striven to conceal. Our limits restrict us to one or two samples of the present [1850] Lord Chancellor's mode of advocacy when at the Bar. After explaining that it was the real object contemplated by the prisoner, viz., to raise rebellion, with which the jury had to deal, the Solicitor-General thus pithily disposed of all arguments which had been drawn from the prisoner's want of power to do all that he intended:—

"It is also immaterial to this case whether or not he had the power to do all he intended. We need not talk of punishing successful rebellion—it is unsuccessful rebellion that comes under the cognisance of the law. I cannot restrain the expression of some surprise at the course of argument that was taken by the learned counsel who last addressed you. His course of argument was this: when the prisoner was interrupted in what he was doing, 'Look and see what he has done;' where he has accomplished his purpose, 'Do not believe the witnesses.' The party having been dispersed by the soldiers, the learned gentleman says, 'See if they went to the post-office; see if they went to the bridge; see if they went to other places'—he knowing that they were stopped before they reached those places; 'but as to marching there with arms to take the town, that I dispose of by asking you not to believe the witnesses; so that, as regards what was prevented, I ask you to see what was done; and as regards what was done, I ask you to disbelieve the witnesses,

and there is an end of the charge.'"—(I. p. 75.)

This single paragraph annihilated a third of the case set up on behalf of Frost; as did the following a second third:—

"They could not have raised these men with a view to relieve the prisoners at the Westgate, because at the time they collected on the mountain they had not been taken. But had it any relation to Vincent? What is their intention? We have been told again and again that Mr Frost must not be supposed likely to do absurd things; that he is a man of the world, and a man of intelligence. What then, gentlemen, do you think of an attempt to induce the Monmouthshire magistrates to relax the prison discipline in favour of a person who has been convicted of sedition, or seditious libel, or something of that sort, by marching into Newport with ten thousand men armed? What do you think of a man of the world resorting to that mode of inducing the magistrates to relax in favour of a prisoner? Is Mr Frost a man of intelligence? Is he a man of the world? Suppose he had been the worst foe that Vincent ever had; suppose that he had desired to procure additional restrictions to be put upon him, and had wished that he should sustain the last hour of the sentence which had been pronounced upon him, could he have resorted to a more maliciously effective mode than by showing that those who were connected with Vincent were persons so little acquainted with their duty, so little obedient to the law, so little to be depended upon for their peaceable conduct, as that they would march at that hour of the night into a town, alarming and frightening everybody?"—(I. p. 79.)

Again:—

"Gentlemen, will you judge of the criminal intentions of persons engaged in an insurrection by the probability of their success? If you do, you will judge of a mob by a rule that never was found correct yet. They always imagine—and they would not begin if

they did not imagine, though they always imagine wrong, but they never will learn wisdom—they always imagine that they can accomplish more than they can; of course they begin, not with the idea of fastening a halter round their necks, but with the idea that they shall succeed, and by their success escape. With those thousands of men (you will see as I pass on what the number of the soldiers were), was it an unnatural thing that, coming at between one and two o'clock in the morning, they should surprise the poor-house; that the soldiers, not being aware that they were coming, might not be prepared—might be taken by surprise—might be either overcome or murdered before they could put themselves in a condition to defend themselves?

"Are their sayings inconsistent? What conspiracy ever was consistent? You would indeed give the most perfect freedom to conspiracy, rebellion, and treason, if you disbelieved witnesses coming to prove declarations inconsistent if made at the same time, though not inconsistent when made at different times. They may at first think the soldiers to be Chartist and their friends, and, in the next moment, talk of attacking them in their barracks. But will you give a *carte blanche* to conspirators and traitors by saying, that if witnesses prove inconsistent declarations, they are not to be believed? It is not, gentlemen, the inconsistency of the witnesses, but of those engaged in transactions, the conduct and management of which must vary from hour to hour, according as circumstances arise; and that which a man may contemplate one minute, may the following minute, or the next hour, be inconsistent with the views that had prevailed, arising out of the then existing circumstances."—(I. p. 89.)

The circumstance of Frost's having been found with the loaded pistols, and not having attempted to use them, is thus significantly disposed of:—

"Give him the benefit of the circumstance that *he did not use* the three loaded pistols which he had about

him. But I think, unfortunately, that they speak much more strongly as indicating violent intentions *when those pistols were provided*, than they speak peaceable intentions when he was apprehended."—(I. p. 24.)

There has been no counsel at the English Bar, in modern times, whose reply was more dreaded by an opponent than Sir Thomas Wilde; and that reply, in Frost's case, abundantly shows how well founded was that apprehension.

Thus, then, the counsel on both sides having played out their parts in the case, it stood awaiting the intervention of the Chief-Justice—the very model of judicial excellence. Tranquil, grave, patient; exact, ready, profound in legal knowledge, and of perfect impartiality—all these high qualities and qualifications were exhibited by him in his luminous and masterly summing-up on this occasion. In order to give all due weight to the sole substantial suggestion offered on behalf of the prisoner—i. e., that his object had been the liberation of Vincent—the Chief-Justice read to the jury the following important passage from that great authority, Sir Matthew Hale—"If men levy war to break prisons, to deliver *one or more particular persons* out of prison, this was ruled, on advice of the Judges, to be not high treason, but only a great riot; but if it was to break prisons, or deliver *persons generally* out of prison, this is treason."* Having taken at once a minute and comprehensive view of the evidence, he left the following as the exact question for their determination,—"Whether it was Frost's object, by the terror which bodies of armed men would inspire, to seize and keep possession of the town of Newport, making this a beginning of an extensive rebellion, *which would be high treason*; or whether he had no more in view than to effect, by the display of physical force, the amelioration of the condition of Vincent and his companions in Monmouth gaol, if not their liberation, *which would be a dangerous misdemeanour only*; and

* HALE'S *Pleas of the Crown*, part i., c. 14.

the jury were to look at the evidence with all possible candour and fairness, and see if the Crown had conclusively disproved this limited object and design." * We conceive that neither Frost nor any one of his ten thousand dupes, on that "day of dupes," which had led to this inquiry, could have taken objection to this mode of submitting the all-critical question to his jury—a jury of his peers, with the selection of whom he himself had had as much concern as the Crown.

That jury retired from court for half an hour, and then returned, amidst the solemn excited silence of the court—crowded to suffocation—with the fatal verdict, "Guilty;" adding, "My lords, we wish to recommend the prisoner to the merciful consideration of the court." Sentence was not immediately passed upon him. He was removed from court; and on its re-assembling on the ensuing morning, Zephaniah Williams was placed at the bar, tried, and in due course found guilty; on which William Jones was in like manner arraigned, tried, and found guilty, each being recommended by the jury to mercy. Scared by this result, five of the ringleaders resolved to throw themselves on the mercy of the Crown, withdrawing their pleas of not guilty, and pleading guilty—it having been intimated that the sentence of death should be commuted into transportation for life. The Attorney-General thought it expedient, in the case of the remaining four prisoners, who were less deeply implicated, to allow a verdict of not guilty to be recorded.

On the 16th January, Frost, Williams, and Jones were brought up to the bar to receive sentence of death, which the Chief-Justice prefaced by a solemn address, listened to in breathless silence. An imposing scene of judicial solemnity and terror, indeed, the court at that agitating moment exhibited. Without were strong detachments of soldiery, foot and horse, guarding the public peace; within were an anxious auditory, commanded to keep silence under pain of fine

and imprisonment, while sentence of death was being passed upon the prisoners. There were, in the midst of the throng, two groups awfully contrasted in character and position—the three prisoners, standing pale and subdued; and, sitting opposite, the three judges, each wearing his black cap; while the following heart-sickening words fell from the lips of the Chief-Justice:—

"And now nothing more remains than the duty imposed upon the court, to all of us a most painful duty, to declare the last SENTENCE OF THE LAW; which is that you, John Frost, and you, Zephaniah Williams, and you, William Jones, be taken hence to the place whence you came, and be thence drawn on a hurdle to the place of execution, and that each of you be there hanged by the neck until you be dead; *and that afterwards the head of each of you shall be severed from his body, and the body of each, divided into four quarters, shall be disposed of, as her Majesty shall think fit. And may Almighty God have mercy on your souls!*"

Whether the words placed in italics should ever again be pronounced on such an occasion, barbarously prescribing a revolting outrage on the dead, which it is known, at the time, cannot be perpetrated in these days of enlightened humanity, is a point which cannot admit of debate. The practice ought forthwith to be abolished, and by statute, if such be necessary.

Under the mortal pressure of this capital sentence remained these three unhappy and misguided men, from the 16th till the 28th of January. On the 25th, an elaborate argument was had at Westminster before the fifteen Judges, which lasted till the 28th, on a case framed by Chief-Justice Tindal for their opinion, on the point which had been raised at the trial by Sir Frederick Pollock. The Chief-Justice submitted these two questions for consideration,—“First, whether the service of the list of witnesses was a good service, under the statute 7 Anne, c. 21, sec. 11; secondly, whether, at all events, the objection was

* TOWNSEND, p. 95.

taken in due time." There was a great array of counsel on both sides; but the argument was conducted by the Attorney-General alone on behalf of the Crown; and by Sir Frederick Pollock, Sir William Follett, and Mr Kelly, on behalf of the prisoners. The utmost possible ingenuity was displayed on both sides; and with such effect, that at the close of the argument, the Chief-Justice of the Common Pleas wrote a letter to the Secretary of State for the Home Department, the Marquis of Normanby, announcing the following somewhat perplexing result,—that "first, a majority of the Judges, in the proportion of NINE to SIX, were of opinion that the delivery of the list of witnesses was NOT a good delivery in point of law:

"But, secondly, a majority of the Judges, in the proportion of nine to six, were of opinion that the OBJECTION to the delivery of the list of witnesses was *not taken in due time*.

"All the Judges agreed, that if the objection had been made in time, the effect of it would have been a *postponement of the trial*, in order to give time for a proper delivery of the list."

The AYES on this occasion were—Justices Littledale, Patteson, Williams, Coleridge, Coltman, Erskine; Barons Parke, Alderson, Rolfe.

The NOES—Chief-Justice Denman, Chief-Justice Tindal, Chief-Baron Abinger; Justices Bosanquet, Maule, and Baron Gurney.

These last (the NOES) decided also that the objection had not been taken in time; and three of the former class (the AYES) viz., Baron Alderson, Baron Rolfe, and Justice Coleridge, concurred in that decision.*

Here was a question for the executive to decide! A capital conviction for high treason, with a decision of the

majority of the Judges of the land; that a statutory requisition as to the period for delivery of a list of the witnesses had not been exactly complied with, but that the prisoner did not make the objection till the time had gone by for making it; and that, had he made it in time, the utmost effect would have been to cause a postponement of the trial for a few days. The prisoner's objection was avowedly *strictissimi juris*; and he did not affect to show that he had suffered the slightest detriment from the over-anxious kindness of the Crown solicitor. That, under these circumstances, the lives of the three traitors were absolutely at the mercy of the Crown, is indisputable; and no one, we conceive, could have censured the Government, if they had advised the Crown to carry the capital sentence into effect. They inclined, however, to the merciful exercise of their anxious discretion; and the capital sentence was remitted, on condition of the three prisoners being transported for the term of their natural lives. They have now been ten years at the Antipodes; and how many times, during that lengthened period of bitter, dishonoured existence, they have cursed their own folly and crime, who can tell?

Have they ever appreciated the skill and vigilance with which they were defended? It is true that this one chance objection, which it is wonderful should have occurred to any one at all, was ultimately pronounced, only, however, by a majority of the Judges, after lengthened debate, to have been taken too late; but if it had not occurred to the vigilant advocate when it did—if no one had taken it at any time—would not the three traitors have been executed? Unquestionably; public justice, the public safety required it. Whether Sir Frederick

* 1 TOWNSEND, pp. 99, 100; and see the argument reported at length in *Regina v. Frost*, 9 Carr and Payne, 165-187. Of these fifteen Judges, only six are still [1850] on the Bench—Barons Parke, Alderson, Rolfe; and Justices Patteson, Coleridge, and Maule—nine having disappeared during the last ten years. It will be observed that the three

chiefs of the courts were of one way of thinking, viz., that there *had* been a good delivery of the list of witnesses, in point of law. Only four of these six are now [1854] on the Bench—Justices Coleridge and Maule, and Barons Parke and Alderson. Baron Rolfe, since created Lord Cranworth, is now Lord Chancellor.

Pollock purposely delayed making the objection till the moment when he did—and the Attorney-General insinuated, before the fifteen Judges, that such was the case*—thinking that course more advantageous to the prisoners, or whether the objection had not, in fact, occurred to him till it was too late, we do not here profess to say. This much, however, we can say, in conclusion, that we are much indebted to the late Mr Townsend for having enabled us to present this entertainment—for such we hope it has proved—to our readers; who may hereafter look with enhanced interest on a great trial, especially if they have the opportunity of witnessing it. They may then appreciate the exquisite anxieties and responsibilities imposed on those concerned in conducting it—the difficulties with which they have to contend on the spot, without time for consideration, though life itself be the stake played for. They will also, pro-

* 9 Carr and Payne, pp. 175, 176.

bably, be of the opinion, that in the great game at Monmouth all the players played their parts well,—may we not say admirably?—that the uttermost justice was done on both sides.

Two practical deductions from the whole may yet be made: first, have a look-out, gentlemen prosecutors, in taking every step of your course, however apparently unimportant at the time it may seem to you; bearing in mind that, in proportion to the desperate exigencies of the defence, will be the piercing scrutiny to which every formality will be subjected; so that a blow may be hit which might easily have been avoided, but, when hit, is fatal. Secondly, in your turn, gentlemen counsel, be encouraged by the result of this interesting and instructive trial, to watch every step of your opponents—even those in which error, omission, or miscarriage is least likely—with sleepless vigilance, and be prompt in action. Thus much for the trial of John Frost.

MODERN STATE TRIALS.

No. II.

HIGH TREASON AND MURDER—MORAL INSANITY.

IMPELLED by motives which we own it hard entirely to justify, and which we must resolve into an overmastering anxiety to behold how doomed human nature can confront terror-inspiring circumstances, felt sufficient to palsy one's own soul, we found ourselves, on Sunday morning, the 5th of July 1840, in the front seat of the stranger's gallery in the Chapel of Newgate, in order to hear the condemned sermon preached to Benjamin Courvoisier,* and witness the demeanour of one who was to be publicly strangled on the ensuing morning, and in the ensuing evening buried within the precincts of the prison. Callous must he have been who could witness the scene of that morning without being profoundly affected. It was the house of God; and yet—with reverence be the allusion made—in one sense, alas! a *den of thieves*—of outcasts from society; whose laws they had, or were charged with having, disregarded and openly violated. Some were there under the pressure of violent suspicion, amounting to a moral, soon to pass into a legal, certainty; of various kinds and degrees of guilt: others bore the blighting brand of established crime, and were suffering, or about to suffer, its penalty. With what feelings would they enter the house of Him who is of purer eyes than to behold iniquity; to Whom all hearts are open, all desires known, and from Whom no secrets are hid! Would any of that guilty throng take their places there, brutally ignorant, indifferent, reckless, or desperate?

* *Vide ante*, The Mystery of Murder, p. 237.

Would their polluted souls be swelling with ill-suppressed feelings of impiety and blasphemy? Would any approach with broken and contrite spirits, having been shaken, by the stern hand of offended human law alone, out of a life's lethargy and insensibility? How would the holy accents of warning, of expostulation, of mercy, of dread denunciation, sound in the ears of those who were presently to fill that dismal chapel—dismal only from its locality, and the character of its occupants? With what feelings would *one* enter,—the death-doomed,—for whom, and for whom alone, was reserved that solitary central, ominous black bench? Who was so terribly far advanced in his passage from a human tribunal to that of the dread Eternal! On whose brow already faintly glistened the dread twilight between here and hereafter,—the black night of time, breaking before the dawning of an eternal day!

They come! Yonder gallery, curtailed off, is filling with the female prisoners; no sounds audible but their rustling dresses, and perhaps a half-choked sigh, or sob. It is well, poor souls! that you are hidden from the public gaze—from the rude eye of your male comrades in crime! They are now entering below, silent and orderly, the eye of the governor upon them, as they are led by burly turnkeys and inspectors to their appropriate places, classed as untried and convicted, the latter according to their respective kinds and degree of punishment. All, at length, are seated. What an assemblage! Almost all clad in

prison costume; many with sullen, determined countenances, others with harassed features and downcast look; one or two exhibiting equivocally an air of insolent and reckless defiance, but all conscious of the stern surveillance under which they sate. Alas, *those boys!* some already, others about to be condemned—all gazing, terror-struck, at the black seat in the centre.

The chaplain enters the desk immediately under the pulpit, which, attached to the blank wall, faces the communion-table. He, also, casts an ominous glance at the black bench before him, in the centre of the floor, to which all faces are directed, amidst moody and troubled silence. At length a door on the left is heard being unbolted; a turnkey enters, followed by the great criminal—one whose name was at that moment ringing in the ears of the public—one on whom every eye is instantly fixed with sickening intensity. It is Courvoisier—the monster who, a few weeks before, had barbarously murdered his sleeping lord!

He was led to his seat, a glass of water being placed near him, in case of his faintness, and on one side of him sate a turnkey. Courvoisier knelt down; and then, a prayer-book having been given him, which he held with a firm hand, took his seat, not far from the reading-desk, covering his eyes for a few moments with his left hand. His demeanour was signally calm and self-possessed, and his motions were deliberate. He was a man about twenty-four years of age. His countenance wore such an expression of pensive good-nature and docility, as rendered it a consolatory reflection that he had unequivocally and spontaneously confessed the fiendish act of which the law had pronounced him guilty, and for which, under holy sanctions, it was on the morrow to take away his life.* Yes, there he

sate, where we had seen sitting, also, his blood-stained predecessor Greenacre; and, moreover, Fauntleroy the forger; also a young banker's clerk, a widowed mother's sole support, her only child, for forging a trifling check. Alas, alas! how he wept during the whole service! but how calmly he behaved the next morning, on the gallows!

After gazing long and earnestly on the central figure in the gloomy picture, our eyes were casually attracted by a very different one,—that of a youth, sitting on the steps of the altar, as though he had been a privileged spectator. We regarded him as a friend of some subordinate functionary of the gaol. He seemed a silly, vulgar, little dandy, who had put on his best clothes for the occasion. He looked about eighteen or nineteen years old, and was of slender figure, and a little under the average height. His hair was full and curly, displayed in a most affected style. He wore a sort of second-hand blue surtout with velvet collar, a black satin stock, a light figured waistcoat, and light slate-coloured trousers,—the latter a trifle too short, and strained down by a pair of elongated straps, so as to reach as nearly as possible to the brightly-polished boots. Beside him was a hat, of which he seemed very careful, and smoothed it round delicately, once or twice, with his hand. His eyes were quick, and inquisitive; and he seemed to share the interest with which others contemplated Courvoisier. Several times, during the service, his fingers passed jauntily through his hair, as if to dispose it effectively round his temples. A prayer-book was handed to him, to which he seemed tolerably attentive; but during the sermon he was evidently more occupied with his dress than the exciting and instructive topics of the chaplain; frequently pull-

* How must the following verses in the Psalms of the day have affected him, if the wretched being were not too bewildered to appreciate them! "Turn Thee unto me, and have mercy upon me, for I am desolate and in misery. The sorrows of my heart are enlarged; O bring Thou me out of my troubles. Look upon my adversity and

misery, and forgive me all my sins," (Ps. xxv. 15, 16, 17). "O shut not up my soul with the sinners, nor my life with the blood-thirsty," (Ps. xxvi. 9). If the murderer's heart did not thrill when these last words were read out by the chaplain, with fearful distinctness, it must have been the only one that did not.

ing off and putting on his gloves, and arranging different portions of his dress, as though he feared they did not sit upon him sufficiently becomingly. When, however, the chaplain addressed himself personally, and with fearful solemnity, to the murderer before him, the young occupant of the altar-steps was roused into attention, and he listened a few minutes, his eyes fixed now on the preacher, then on the condemned. When the service was over, Courvoisier, whose demeanour had been throughout most satisfactory, solemn, composed, and reverent, was beckoned out to the door through which he had entered, and he obeyed, walking with complete self-possession. We had looked our last on him!

"Do you see that young fellow on the altar-steps?—do you know who he is?" said a gentleman who approached us for the purpose. "No; he seems a vulgar little puppy," we exclaimed, "whoever he may be." "It is Oxford, who shot at the Queen, and is to be tried this week!" was the reply; and while we turned round to gaze at him, he was in the act of quitting the chapel, holding his hat very carefully, and gazing towards the gallery with an expression of cheerful inquisitiveness. Had it occurred to him that, in all human probability, a week or two would behold *him* an occupant of the black bench just quitted by the murderer?

Yes! that was Edward Oxford, the little caitiff, first of a small and ignominious series of similar ones, who had, on the preceding 9th of June, twice deliberately fired at his young Queen, as she was driving, in fancied security, with her consort, up Constitution Hill, and on each occasion apparently with ball! The following was his own free-and-easy account of the matter, on being examined before the Privy Council:—

"A great many witnesses against me. Some say I shot with my left, others with my right. They vary as to the distance. After I had fired the first pistol, Prince Albert got up, as if he would jump out of the coach, and sat

down again, as if he thought better of it. Then I fired the second pistol. This is all I shall say at present.

(Signed) "EDWARD OXFORD."

In the case of this young miscreant (for it is difficult to speak of him temperately), however, was, within four days' time, to be resolved a problem of unspeakable difficulty and moment, by such means as the law of the country could command,—viz., responsibility or irresponsibility for criminal acts, according to the state of mind supposed to be existing at the time of committing them. It is needless to affirm that this is a question of public, permanent, universal interest; one in which every individual, young or old, *may* become personally concerned; one which no human jurist, practical or speculative, can approach without lively anxiety; one worthy of frequent and deep consideration by every one concerned in the administration of criminal justice. To punish an individual utterly unconscious of the difference between right and wrong at the time of committing the alleged crime, shocks one's sense of natural justice, and confounds all the principles on which it can be administered by man. How can we hang a maniac who, in a paroxysm of madness, kills the keeper who was endeavouring to soothe or to restrain him? Or one who shoots another whom, under the veritable and sole influence of delusion, he believed to be in the act of killing *him*, and that he was therefore acting solely in self-defence? These are plain cases, as stated; but still they require, of course, very clear proof of the facts from which the law is to deduce a perfect irresponsibility for his acts. The subject is one environed with immense practical difficulties, which are often unexpectedly visible in applying apparently clear and correct principles to simple combinations of fact. The most sagacious judges, the most conscientious juries, have grievously miscarried in such cases: some sending persons to the scaffold under circumstances far weaker than those held by others demonstrative of irresponsibility, and, con-

sequently, demanding an acquittal. Many painful and dreadful cases might be cited; but two shall suffice.

In the year 1837, an industrious, affectionate, poverty-stricken father strangled his four children, avowedly to prevent their being turned into the streets. They all slept in one room. Having strangled two, he left the room; but after meditating for some time, came to the conclusion that he might as well be hanged for killing all four; on which he returned, and strangled the other two—having shaken hands with them before he did it! He then quitted the house, and went to a neighbour's, to whom he did not mention what he had done; but on being apprehended the next day, and taken before the coroner, he confessed the above facts. No witness had ever observed a trace of insanity about him. The physician to a lunatic asylum offered to prove that the prisoner's grandmother and sister had been under his care, the latter for entertaining a desire to destroy herself and her children—evidence which the judge rejected; and under his direction the jury convicted, and he passed sentence of death on the prisoner.* In the year 1845, a young servant girl, quiet and docile, having taken a knife from the kitchen, on some trivial pretence, went up to the room where her master's child lay, and killed it. She then went down stairs, and told the horrifying fact to her master. She was quite conscious of the crime she had committed, and showed much anxiety to know whether she would be hanged or transported. There was not the slightest tittle of evidence that she had been labouring under any delusion; yet she was acquitted on the ground of insanity!† Can anything be more grievously unsatisfactory than such a state of things as this, in the administration of the criminal justice of the country? One of the causes which conduced to such results was the too ready defer-

ence paid to speculative medical men, professing to have made disordered intellects their peculiar study, and who came forward, from time to time, confidently and authoritatively pronouncing that such and such circumstances indicated unequivocally the existence of "insanity," of "moral insanity," at the time of the act committed. Nay, they would sit in court, listening to a detail of facts, from which they would then enter the witness-box, and authoritatively declare their opinion that, if such were the facts, the prisoner was *insane*, and therefore irresponsible, when the act in question was committed! Many held that the mere absence of assignable motive indicated such insanity! and many, that the mere committal of the particular act should be so regarded! Notions more dangerous and monstrous cannot be conceived. Well might the late Mr Baron Gurney declare, "that the defence of insanity had lately grown to a fearful height, and the security of the public required that it should be watched."‡

There are two trials contained in Mr Townsend's first volume, which afford memorable illustrations of the difficulty with which these questions are encountered in our courts of justice. They are those of Oxford, for shooting at the Queen, and of M'Naughten for the murder of Mr Drummond, the private secretary of the late Sir Robert Peel. In both cases there were acquittals, on the alleged ground of insanity; and we take leave to intimate that, in our opinion, there should have been convictions in both. The escape of the cold-blooded murderer, M'Naughten, who deliberately shot his unsuspecting victim in the back, horrified and disgusted the public. "It had not been anticipated," says Mr Townsend, "and created a deep feeling in the public mind, that there was some unaccountable defect in our criminal law. People of good sense appeared panic-stricken, by this new danger, from venturing into the London streets; and called upon the legislature to dis-

* He was subsequently respited, owing to the zealous interference of some medical men, who succeeded in satisfying the Secretary of State of the prisoner's insanity.—See TAYLOR'S *Medical Jurisprudence*, p. 792.

† Ibid. pp. 803, 804.

‡ *Rex v. Reynolds*. TAYLOR'S *Med. Jurisp.* p. 801.

cover some preservative against the attacks of insane passengers in public thoroughfares." * Indignation was loudly expressed in Parliament. In the House of Commons, an honourable Irish baronet moved for leave to bring in a bill to abolish the plea of insanity in cases of murder, except where it could be proved that the person accused was publicly known and reputed to be a maniac; and he asked the House to suspend the standing orders to accelerate the progress of his bill. His motion, however, found no seconder. A similar casualty had befallen Mr Windham, in 1800, who, in the course of a debate which ensued in bringing in a bill to meet such cases as that of Hadfield, who had just been acquitted, on the ground of insanity, from the charge of firing at George III., suggested that an offender, *even if insane*, should be subjected to some sort of punishment, for the sake of example! On the same evening in which the attempt of Sir Valentine Blake was made in the House of Commons, the matter was discussed anxiously in the House of Lords, by Lords Lyndhurst, Brougham, Cottenham, Campbell and Denman. Lord Campbell expressed the general feeling of the House, when he said, "There may be great difficulty in convicting persons who were not in a state of mind to be responsible for their actions; but it is monstrous to think that society should be exposed to the dreadful dangers to which it is at present liable, from persons in that state of mind going at large."† At length, on the suggestion of the Lord Chancellor, Lord Lyndhurst, it was agreed that the Judges should be called upon to declare the true state of the criminal law on this momentous subject; and five questions were carefully framed for that purpose, and submitted to them for grave consideration. The following are these questions and answers—both of which, as containing a solemn and authoritative enunciation of the law of the land, we shall present to our readers, whom we request to bestow on them a careful per-

usal, before proceeding to read what we have to offer on the two trials above alluded to. We are the more anxious that they should do so, because of the recent remarkable case of Pate, who struck her Majesty with a cane, last summer; and whose case was dealt with in strict conformity with the rules which follow:—

QUESTION I.—"*What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects, or persons:—as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit?*"

ANSWER.—"Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law; by which expression we understand your lordships to mean the law of the land."

QUESTIONS II. and III.—(1.) "*What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion, respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?*"

(2.) "*In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?*"

ANSWERS.—"The jury ought to be told, in all cases, that *every man is presumed to be sane*, and to possess a suf-

* Vol. i. p. 320.

† TOWNSEND, vol. i. p. 46.

ficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury, on these occasions, has generally been whether the accused, at the time of doing the act, knew the difference between right and wrong—which mode, though rarely if ever leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put to the party's knowledge of right and wrong with respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury—whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

QUESTION IV.—"If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?"

ANSWER.—"The answer must of course depend on the nature of the delusion; but making the same assumption as we did before—that he labours under such partial delusion only, and is not in other respects insane—we think he must be considered in the same situation, as to responsibility, as if the facts with respect to which the delusion exists were real. For example—if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion were that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

QUESTION V.—"Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any, and what, delusion at the time?"

ANSWER.—"We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated; because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

Such being the authoritative enun-

ciation of the law by its legitimate exponents, which superseded the necessity of legislative interference, it is right to observe that it has by no means satisfied the professors of medical jurisprudence, and the members of the medical profession. One of them, Mr Taylor, has observed,* that the law here appears to "look for a consciousness of right and wrong, and a knowledge of the consequences of the act." This legal test "is insufficient for the purpose intended: it cannot, in a large majority of cases, enable us to distinguish the insane homicide from the sane criminal. * * * A full consciousness of the illegality or wrongfulness of the act may exist in a man's mind, and yet he may be fairly acquitted on the ground of insanity. * * * There are no certain legal or medical rules whereby homicidal mania may be detected. Each case must be determined by the circumstances attending it; but the true test for irresponsibility in these ambiguous cases appears to be, whether the individual, at the time of committing the act, had, or had not, a *sufficient power of control* to govern his actions. If, from circumstances, it can be inferred that he had this power, he should be made responsible, and rendered liable to punishment. If, however, he was led to the perpetration of the act by an *uncontrollable impulse*, whether accompanied by deliberation or not, then he is entitled to an acquittal as an irresponsible agent."† This doctrine is utterly repudiated, however, by our Judges, as will appear from two decisive instances. In directing the jury, in Pate's case, in July last, Mr Baron Alderson thus somewhat sarcastically disposed of the dangerous plea of "uncontrollable impulse:"—"The law does not recognise such an impulse. If a person was aware that it was a wrong act he was about to commit, he was answerable for the consequences. *A man might say that he picked a pocket*

from some uncontrollable impulse; and in that case the law would have an uncontrollable impulse to punish him for it!" Another acute and eminent Judge, Baron Rolfe,‡ on a recent occasion, in trying a boy aged twelve years, for deliberately and cunningly poisoning his aged grandfather, thus gravely dispelled this favourite delusion of the medical jurists:—"The witnesses called for the defence had described the prisoner as acting from 'uncontrollable impulse.' In my opinion, such evidence ought to be scanned by juries with very great jealousy and suspicion, *because it may tend to the perfect justification of every crime that may be committed.* What is the meaning of not being able to resist moral influence? Every crime is committed under an influence of such a description, and the object of the law is to compel persons to control these influences. If it be made an excuse for a person who has committed a crime, that he has been goaded to it by some impulse, which medical men may choose to say he could *not* control, I must observe, that such a doctrine is fraught with very great danger to society." This stern and sound good sense prevailed; and the youthful murderer was convicted. We have been thus full and distinct in explaining the wholesome doctrine of our English law, because of its immense importance; and we desire it to be understood, far and wide, especially by the medical profession, that these fashionable but dangerous modern paradoxes, borrowed from Continental physicians, concerning the *co-existence of moral insanity* with intellectual sanity, will not be tolerated in English courts of justice.

Let us now proceed to deal with the two remarkable cases of Oxford and M'Naughten: the former of whom was placed at the bar of the Old Bailey four days after the execution of Courvoisier.

It is unspeakably painful, humiliating, and disgusting, to reflect that our Queen, who has always shown a disposition to trust herself unreservedly

* *Medical Jurisprudence*, p. 794, 8d edition. This is, in our opinion, the best book extant on medical jurisprudence.

† *Ibid.* p. 798.

‡ Now Lord Cranworth, Chancellor.

among her subjects; should have been subjected to no fewer than five public outrages, the last of which inflicted actual injury on the royal person; that of a lady, a young queen, ascending the throne of this mighty empire at the age of eighteen!—Outrages in every instance perpetrated by despicable beings of the male sex, properly characterised by Mr Townsend as “crazed knaves, or imbecile monomaniacs.” First came, on the 10th June 1840, Edward Oxford, aged nineteen; then, on the 30th May 1842, John Francis, aged twenty; then, on the 3d July 1842, John William Bean, a deformed stripling aged seventeen; then, on the 19th May 1849, William Hamilton; finally—God grant that the degraded series may never be increased!—on the 27th June 1850, Robert Pate—alas! a gentleman of birth and fortune, and who had recently borne her Majesty’s commission!

We shall place our readers, briefly and distinctly, in possession of the state of the law applicable to wilfully injuring, or attempting to injure, The Royal Person.

Its progress is painfully interesting. The attempt to inflict, and the actual infliction of such injury, are of course high treason; both the trial and punishment being attended, till recently, with all the solemn formalities of high treason, as explained in our last paper. This heinous offence comes under the first head of the statute of treason (25 Edward III. c. 2), viz., “When a man doth *compass* or *imagine** the death of our Lord and King.” By “compass and imagine” is signified the purpose or design of the mind or will, evidenced by an open or *overt* act. On the 15th May 1800, James

* “Is it not extraordinary,” asked the learned Mr Barrington, (*Observations on the Ancient Statutes*, p. 270), “that the life of an Englishman prosecuted by the Crown should continue to depend upon the critical construction of two obsolete French words?” (*fait compasser out imaginer la mort de nôtre seigneur le roi*). There is practically no force in these remarks, made nearly a century ago; as the words have a perfectly defined and recognised legal signification, and which is that mentioned above.

Hadfield fired a horse-pistol, loaded with two slugs, at King George III., as he was entering his box at Drury Lane Theatre.† He was tried for high treason in the Court of Queen’s Bench, and defended by Mr Erskine with splendid eloquence.‡ He was acquitted on the ground of insanity, committed at once to Bedlam, and died there in January 1841, after forty years’ incarceration. In the course of his defence, Mr Erskine made an observation which led to an immediate interposition of the legislature. In speaking of the state of the law which interposed protective delay in cases of high treason, Mr Erskine observed:—“Where the intent charged affected the *political character* of the sovereign, the delay, and all the other safeguards provided, were just and necessary; but a mere murderous attack on the king’s person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.”§ On the 28th July, in the same year, were passed statutes 39 and 40 Geo. III. c. 93, carrying out Mr Erskine’s judicious suggestion, by enacting that, where the overt act of this head of treason should be the assassination of the King, or any direct attempt against his life or person, whereby his life might be endangered or his person suffer bodily harm, the *trial* should be conducted in every respect like a simple trial for murder;

† His Majesty’s noble demeanour, calm, courageous, and dignified, on that agitating occasion, has always been justly applauded. The audience was of course highly excited; and Mr Sheridan composed, on the spur of the moment, the following spirited addition to the National Anthem. It was sung by Mrs Jordan thrice that evening:—

“From every latent foe,
From the assassin’s blow;
God shield the King!
O’er him thine arm extend;
For Britain’s sake defend
Our father, prince, and friend—
God save the King!”

‡ Sir William Follett, then Solicitor-General, in addressing the jury in prosecuting M’Naughten, alluded to the speech of Mr Erskine as “one of the most eloquent and able speeches, probably, that was ever delivered at the Bar.”

§ ADOLPHUS’S *History of England*, vol. vii. p. 277.

but, on conviction, the sentence should be pronounced and carried into effect as in other cases of high treason. On the same day was passed another statute, also occasioned by the trial of Hadfield, that in all cases of trial for treason, murder, or felony, if evidence be given of the prisoner's insanity, at the time of the commission of the offence, and he be acquitted, the jury shall be required to find specially whether he was insane at the time of committing the offence, and to declare whether they acquit on account of such insanity; and if they do, the court shall order the prisoner to be confined in strict and safe custody during his Majesty's pleasure. Under the former of these two wholesome statutes were tried Oxford and Francis, the latter being convicted of having fired a pistol against the Queen, loaded with powder and "certain other destructive materials and substances unknown;" on which sentence of death was pronounced by Chief-Justice Tindal, as in other cases of high treason. He sobbed piteously* on being convicted; and after two consultations of the Cabinet had been held on his case, his life was spared, in contemptuous clemency to the worthless offender, and in deference to the humane feelings of her Majesty, and he was transported for life.

Within almost one month after this questionable act of mercy, her Majesty was subjected to a similar outrage—a pistol being presented towards her, by Bean, on Sunday, as she was going to the Chapel Royal. The pistol was cocked, and the click of the hammer against the pan was heard, but there was no explosion; and the pistol was loaded with only powder, wadding, and one or two minute fragments (about the size of ordinary shot) of pipe. He was tried for misdemeanour, and sentenced to eighteen months' imprisonment in the penitentiary; Lord Abinger remarking, at the conclusion of the trial, that "whipping at the cart's tail would be the fitting sentence, in future." The public disgust and in-

dignation demanded some more effectual remedy to be provided for such disgraceful cases, should any unhappily occur in future; and within a fortnight of Bean's conviction, viz., on the 16th July 1842, was passed statute 5 and 6 Vict., c. 51, entitled, "An act for providing for the further security and protection of her Majesty's person." It recites the expediency of extending the provisions of statute 39 and 40 Geo. III. c. 93, to "any attempt to injure, in any manner whatsoever, the person of the Queen," and of "making further provision by law for the protection and security of the person of the sovereign of these realms." It then proceeds to enact, that—

"If any one shall wilfully discharge or attempt to discharge, or point, aim, or present, at or near to the person of the Queen, any gun, pistol, or other description of firearms, or of other arms whatever—whether the same shall or shall not contain any explosive or destructive material; or discharge, or attempt to discharge, any explosive substance or material near to the Queen's person; or wilfully strike, or attempt to strike, or strike at the Queen's person with any offensive weapon, or in any other manner whatsoever; or wilfully throw or attempt to throw any substance, matter, or thing whatsoever at or upon the Queen's person, with intent to break the public peace, or whereby the public peace may be endangered, or to alarm her Majesty; or if any person shall, near to the Queen's person, wilfully produce or have any gun, pistol, or other description of firearms, or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the Queen's person or alarm her Majesty, the offender shall be guilty of a high misdemeanour, and liable at the discretion of the court to be transported for seven years, or imprisoned with or without hard labour for any period not exceeding three years; and during such imprisonment to be publicly or privately whipped as often and in such manner

* TOWNSEND, vol. i. p. 104.

and form as the court shall direct, not exceeding thrice."

This salutary statute, proposed by the late Sir Robert Peel, was passed unanimously; Lord John Russell justly remarking, that "as the offence to be punished was that of bad and degraded beings, a base and degrading punishment was most fitly applied to it." Her Majesty enjoyed a seven years' respite from the insufferable annoyance to which she had been subjected—viz., till the 19th May 1849—when, about four o'clock in the afternoon, as she was driving in an open carriage with three of her children, a pistol was fired in the direction of the carriage by "one William Hamilton, an Irish bricklayer." The pistol was fired point-blank at the person of General Wemyss, one of her equerries, who happened to be in the line of her Majesty's person. This stolid wretch was tried on the 14th June ensuing, under the above statute, when he pleaded guilty, and was sentenced to be transported for seven years. Again, on the 12th of July last, it was rendered lamentably necessary to call this statute into operation, and with the like effect as in the preceding case: but we shall reserve our observations upon the case of Pate till after the completion of what we have to offer on those of Oxford and M'Naughten. We have just returned from a personal examination of those two notorious persons, in Bethlehem Hospital: and shall by-and-by convey to the reader the result of our own careful observations, made since the earlier portions of this article were committed to the press.

OXFORD'S CASE.

The Judges who presided at the trial, which took place at the Old Bailey, and lasted three days (the 9th, 10th, and 11th July 1840), were Lord Denman, Baron Alderson, and Justice Maule. The counsel for the Crown were—the Attorney and Solicitor-Generals (Sir John Campbell and Sir Thomas Wilde), Sir Frederick Pollock,

the present Mr Justice Wightman, Mr Adolphus, and Mr Gurney; those for the prisoner were the late Mr Sydney Taylor, and Mr Bodkin. The indictment contained two counts, respectively applicable, in precisely the same terms, to the two acts of firing, charging that Oxford, "as a false traitor, maliciously and traitorously did compass, imagine, and intend to put our lady the Queen to death; and, to fulfil and bring into effect his treason and treasonable compassing, did shoot off and discharge a certain pistol loaded with gunpowder and a bullet, and thereby made a direct attempt against the life of our said lady the Queen,"—in the words of statute 39 and 40 Geo. III., c. 93, sec. 1. The trial, as already observed, differed in no respect from an ordinary trial for felony; and neither the Crown nor the prisoner challenged a single jurymen. "Oxford," says Mr Townsend, "stepped into the dock with a jaunty air, and a flickering smile on his countenance; glanced at the galleries, as if to ascertain whether he had a large concourse of spectators; and, leaning with his elbow on the ledge of the dock, commenced playing with the herbs* which were placed there before him. He kept his gaze earnestly fixed on the Attorney-General during the whole of his address, twirling the rue about in his fingers; but became more subdued in manner towards the close of the speech."† The facts constituting the outrage lie in a nutshell:—The prisoner was seized instantly after having discharged two pistols, as the Queen and the Prince-consort were driving up Constitution Hill, in a low open carriage. He had been observed, for some time before the approach of the royal carriage, walking backwards

* At the Old Bailey, rue is placed plentifully on the ledge of the dock; whether in capital cases only we do not know. The monster Maria Manning furiously gathered the rue that lay before her, and flung it amongst the council sitting at the table beneath her! Prisoners have been known, and that not unfrequently, to devour, unconsciously, much of the nauseous herb before them, during the agony and suspense of their trials.

† TOWNSEND, vol. i. p. 113.

and forwards with his arms folded under his breast. As the carriage approached, he turned round, nodded, drew a pistol from his breast, and discharged it at the carriage, when it was nearly opposite to him. As it advanced, after looking round to see if he were observed, he took out a second pistol, directed it across the other to her Majesty, who, seeing it, stooped down; and he fired a second time—very deliberately—at only about six or seven yards' distance. The witnesses spoke to hearing distinctly a sharp whizzing sound "close past their own ears." The prisoner, on seeing the person who had snatched from him the pistols mistaken for the person who had fired, said, "It was me—I did it. I give myself up—I will go quietly." At the police-office he said, "Is the Queen hurt?" Some one observed, "I wonder whether there was any ball in the pistol?" on which the prisoner said, "If the ball had come in contact with your head, if it were between the carriage, you would have known it." The witness who spoke to these words appears, however, to have somewhat hesitated when pressed in cross-examination; but he finally adhered to his statement that the prisoner declared there were balls in the pistols. A few days previously the prisoner had purchased the pistols for two sovereigns, about fifty percussion-caps, a powder-flask, which, with a bullet-mould and five bullets fitting the pistols, were found at his lodgings. He had also been practising firing at a target, and, on purchasing the pistols, asked particularly how far they would carry. The Earl of Uxbridge deposed that, when he saw Oxford in his cell, he asked, "Is the Queen hurt?" on which Lord Uxbridge said, "How dare you ask such a question?" Oxford then stated that "he had been shooting a great deal lately—he was a very good shot with a pistol, but a better shot with a rifle." "You have now fulfilled your engagement," said the Earl. "No," replied Oxford, "I have not." "You have, sir," rejoined Lord Uxbridge, "as far as the attempt

goes." To that he was silent. The most rigid search was made to discover any bullets, but in vain. Two witnesses, gentlemen of rank, and well acquainted with the use of fire-arms, spoke confidently to having seen bullet-marks on the wall, in the direction in which Oxford had fired; but the Attorney-General expressed his opinion that the evidence was entitled to no weight, as probably mistaken; declaring himself, however, positive that there must have been balls in the pistols, but that the pistols had been elevated so high that the balls went over the garden-wall. One of the witnesses said to the other, immediately after seizing Oxford, "Look out—I dare say he has some friends;" to which he replied, "You are right—I have." At his lodgings were found some curious papers, in Oxford's handwriting, purporting to be the rules of a secret club or society called Young England; the first of which was, "that every member shall be provided with a brace of pistols, a sword, a rifle, and a dagger, the two latter to be kept at the committee-room." A list of members—*factitives*' [sic] names were given. "Marks of distinction: Council, a large white cockade; President, a black bow; General, three red bows; Captain, *two red bows*; Lieutenant, one red bow." There were also found in Oxford's trunk a sword and scabbard, and a black crape cap with *two red bows*—one of the "rules" requiring every member to be armed with a brace of loaded pistols, and to be provided with a black crape cap to cover his face, with his marks of distinction outside. Three letters were also found in his pocket-book, addressed to himself at three different residences, purporting to be signed by "A. W. Smith, *secretary*," and to contain statements of what had taken place, or was to take place, at the secret meetings of the society. They were all headed "Young England," and dated respectively, "16th May 1839," "14th Nov. 1839," and "3d April 1840." Oxford said he had intended to destroy these papers in the morning, before he went

out, but had forgotten it. All these papers—the “rules” and letters—were sworn by Oxford’s mother to be *in his own handwriting*; and it should have been mentioned that there was not a tittle of evidence adduced to show that there were, in fact, any such society in existence, or any such persons as these papers would have indicated; nor, up to the present moment, has there been the least reason for believing that such was the case.

Thus closed the case for the Crown,—undoubtedly a formidable one. No attempt was made by the prisoner’s counsel, who appear to have conducted the defence temperately and judiciously, to alter, by evidence, the position of the proved facts; which, therefore, were allowed to stand before the jury as almost conclusively establishing the case of high treason. Mr Taylor, however, strongly impaired the Attorney-General’s notion that there had been in the pistols balls, which had gone over the wall; because his own witnesses had spoken decisively to the bullet-marks on the wall; yet no flattened balls had been produced, after all the search that had been made. Mr Taylor, therefore, inferred that the pistols had contained powder only: “a great outrage, unquestionably, but still not the *treason* charged.” There was, again, he contended, there could have been, no *motive* for killing the Queen; and the idea of the Treasonable Society was mere moonshine, a pure invention concocted by a lunatic, one who had inherited insanity, and himself exhibited the proofs of its existence: for Mr Taylor undertook to prove the insanity of Oxford’s grandfather, his father, and himself. The proof broke down as far as concerned the grandfather, a sailor in the navy; for it was clear that his alleged violent eccentricities had been exhibited when he was under the influence of liquor. The insanity of Oxford’s father was sought to be established by his widow, the mother of the prisoner. If her story, “told with unflinching

voice and unshaken nerve,” were correct, her husband had undoubtedly been a violent and brutal fellow, with a dash of madness in his composition. It is possible that the mother, in her anxiety to save her son from a traitor’s death on the scaffold, had, by a *quasi pia fraus*, too highly coloured her deceased husband’s conduct. If this were not so, she had indeed been an object of the utmost sympathy. He forced her to marry him, she said, by furious threats of self-destruction if she did not: he burnt a great roll of bank-notes to ashes in her presence, because she had refused, or hesitated, to become his wife. He used to terrify her, during her pregnancies, by hideous grimaces, and apish tricks and gesticulations: the results being that her second child was born, and within three years’ time died, an idiot. Her husband pursued the same course during her pregnancy with the prisoner, and presented a gun at her head. The prisoner had always been a headstrong, wayward, mischievous, eccentric youth—subject to fits of involuntary laughing and crying. He was absurdly vain, boastful, and ambitious; and wished his mother to send him to sea, where he would have nothing to do but walk about the deck, give orders, and by-and-by become Admiral Sir Edward Oxford! This was the utmost extent of the facts alleged in support of the defence of insanity. The prisoner’s whole life had been traced, by evidence, while he was at school, and in three distinct services; and he had never been confined, or in any way treated as mad. His sister spoke to his going out on the day of the outrage, and detailed a conversation evincing no symptoms of wandering. He used to have books from the library—“The Black Pirate,” “Oliver Twist,” and “Jack Sheppard.” On leaving home that day, about three o’clock in the afternoon, he told his sister that he was going to the Shooting Gallery, to buy some linen for her to make him some shirts, and to bring home some tea from a particular shop in the Strand. A nursery-maid, to

whom he had written a ludicrously-addressed letter a few weeks before, said, "I considered him in a sound state of mind, but sometimes very eccentric:" than which, no words were fitter to characterise the true scope and tendency of all the evidence which had been offered to prove him insane. Of that evidence, according to the genius and spirit, and also the letter of English law, twelve intelligent jurymen were the proper judges, under judicial guidance; and greatly to be deprecated is any attempt to deprive them of their right, and their fellow-subjects, the public at large, of the protection afforded by its unfettered exercise.

We therefore earnestly beg the reader to assume that he is given credit for an average degree of intelligence, and only a moderate amount of moral firmness—to imagine himself a jurymen, charged with the solution of this critical problem. We ask—On the facts now laid before you, do you believe Oxford to have been no more conscious of, or accountable for, his actions, in twice deliberately firing at the Queen, than would have been a baby accidentally pulling the trigger of a loaded pistol, and shooting its fond incautious mother or affectionate attendant?

If Oxford, instead of shooting at the Queen, had shot himself that afternoon: would you, being sworn "to give a just and true verdict *according to the evidence*," have pronounced him insane—totally unconscious and irresponsible? Would you have declared him such, if required to say *ay* or *no* to that question on a commission of lunacy? Would you have declared his marriage, on that afternoon, null and void, on the ground of his insanity? Would you have declared his will void? or any contract, great or small, into which he had entered? Would you have declared his vote, in a municipal or parliamentary election, invalid? If he had committed some act of petty pilfering or cheating, would you have deliberately absolved him from guilt on the ground of insanity? Would you, in each and

every one of these cases, have declared, upon your oath, that you believed Oxford was "*labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing,—or, if he did know it, that he did not know he was doing wrong?*"* We entreat you to forget altogether the enormity of the offence imputed to Oxford—an attempt to take the life of his Queen: dismiss it, and all consideration of consequences, as a disturbing force, and address your reason exclusively to the question last proposed. What would be your sworn answer? We beg you also to bear in mind from whom has proceeded the chief evidence in support of the defence of insanity—a mother, seeking to rescue her son from the fearful death of a traitor; and that the attempt to impugn his mental sanity is not made till after such a terrible occasion has arisen for doing so. Had it been their interest to establish *his sanity*, in order to uphold a will of his bequeathing them a large sum of money, who sees not how all their evidences of insanity would have melted into thin air, and the attempt to magnify and distort petty eccentricities into such, have been branded as cruel, unjust, and disgraceful?

But there came five doctors on the scene, and at their approach the light of reason was darkened. These astute personages, mysterious in their means of knowledge, and confident in their powers of extinguishing the common sense of both judges and jury, came to demonstrate that the unfortunate young gentleman at the bar was no more the object of punishment than the unconscious baby aforesaid; no more aware of the nature and consequences of the act which he had done than is the torch with which a haystack is fired, or the bullet, cannon-ball, or dagger with which life is taken away! But let them speak for themselves—these wise men of Gotham—these confident disciples of the "*couldn't help it*" school!

FIRST DOCTOR.—*Question* by the pri-

* Opinions of the Judges, *ante*, p. 298.

soner's counsel and the Court—"Supposing a person, in the middle of the day, without any suggested motive, to fire a loaded pistol at her Majesty, passing along the road in a carriage; to remain on the spot; to declare he was the person who did it; to take pains to have that known; and afterwards to enter freely into discussion, and answer any questions put to him on the subject: would you, from those facts alone, judge a person to be insane?"

Answer.—"I should."

The Court.—"You mean to say, upon your oath, that if you heard these facts stated, you should conclude that the person would be mad?"

The Doctor.—"I do."

The Court.—"Without making any other inquiry?"

The Doctor.—"Yes! * * * If, as a physician, I was employed to ascertain whether a person in whom I found these facts was sane or insane, I should undoubtedly give my opinion that he was insane."

The Court.—"As a physician, you think every crime, plainly committed, to be committed by a madman?"

The Doctor.—"Nothing of the kind; but a crime committed under all the circumstances of the hypothesis!"

As to the hypothesis proposed, the reader will not have failed to observe how inapplicable it was to the proved facts. Oxford certainly "remained on the spot," because he could not possibly have got away; there being a high wall on one side, high park railings on the other, and an infuriate crowd, as well as the Queen's attendants, on all sides. He also certainly "declared he was the person who did it," but how absurd to deny what so many had witnessed?

SECOND DOCTOR.—He is asked the same question which had been proposed to the first Doctor, with the addition of "hereditary insanity being in the family" of the person concerned.

Answer.—"I should consider these circumstances of strong suspicion; but other facts should be sought before one could be warranted in giving a positive opinion."

Question by the Prisoner's Counsel.—"Are there instances on record of persons becoming suddenly insane, whose conduct has been previously only eccentric?"

Answer.—"Certainly. Supposing, in addition, that there was previous delusion, my opinion would be that he is unsound. Such a form of insanity exists, and is recognised."

Question by the Counsel for the Crown.—"What form of insanity do you call it?"

Answer.—"Lesion of the will—insanity connected with the development of the will. It means more than a loss of control over the conduct—morbid propensity. Moral irregularity is the result of that disease. Committing a crime without any apparent motive is an indication of insanity." * * *

Question by the Court.—"Do you conceive that this is really a *medical* question at all, which has been put to you?"

Answer.—"I do: I think medical men have more means of forming an opinion on that subject than other persons."

Question.—"Why could not any person form an opinion, from the circumstances which have been referred to, whether a person was sane or insane?"

Answer.—"Because it seems to require a careful comparison of particular cases, more likely to be looked to by medical men, who are especially experienced in cases of unsoundness of mind."

THIRD DOCTOR.—"I have 850 patients under my care in a lunatic asylum. I have seen and conversed with the prisoner. In my opinion he is of unsound mind. I never saw him in private more than once, and that for perhaps half an hour, the day before yesterday; and I have been in court the whole of yesterday and this morning. These are the notes of my interview with him:—'A deficient understanding; shape of the anterior part of the head, that which is generally seen when there has been some disease of the brain in early life. An

occasional appearance of acuteness, but a total inability to reason. Singular insensibility as regards the affections. Apparent incapacity to comprehend moral obligations—to distinguish right from wrong. Absolute insensibility to the heinousness of his offence, and the peril of his situation. Total indifference to the issue of the trial; acquittal will give him no particular pleasure, and he seems unable to comprehend the alternative of his condemnation and execution: his offence, like that of other imbeciles who set fire to buildings, &c., without motive, except a vague pleasure in mischief. Appears unable to conceive anything of future responsibility."

Question by the Court.—"Did you try to ascertain *whether he was acting a part with you, or not?*"

Answer.—"I tried to ascertain it as well as I possibly could. My judgment is formed on all the circumstances together."

FOURTH DOCTOR.—To the same general question put to first and second Doctors.

Answer.—"An exceedingly strong indication of unsoundness of mind. A propensity to commit acts without an apparent or adequate motive, under such circumstances, is recognised as a particular species of insanity, called *lesion of the will*: it has been called moral insanity."

Question.—"From the conversation you have had with the prisoner, and your opportunity of observing him, what do you think of his state of mind?"

Answer.—"Essentially unsound: there seems a mixture of insanity with imbecility. Laughing and crying are proofs of imbecility—assisting me to form my opinion. * * * When I saw him, I could not persuade him that there had been balls in the pistols—he insisted that there were none. He was indifferent about his mother when her name was mentioned. His manner was very peculiar: entirely without acute feeling or acute consciousness—lively, brisk, smart—perfectly natural—not as if he were acting, or making the least pretence. The in-

terview lasted about three quarters of an hour."

LAST DOCTOR.—"A practising surgeon for between three and four years. Had attended the prisoner's family."

Question.—"What is your opinion as to his state of mind?"

Answer.—"Decidedly that of imbecility—more imbecility than anything: he is decidedly, in my judgment, of unsound mind. His mother has often told me there was something exceedingly peculiar about him, and asked me what I thought. The chief thing that struck me was his involuntary laughing: he did not seem to have that sufficient control over the emotions which we find in sane individuals. In Newgate, he had great insensibility to all impressions sought to be made on him. His mother once rebuked him for some want of civility to me; on which he jumped up in a fury, at the moment alarming me, and saying 'he would stick her.' I think that was his expression."

Questioned by the Counsel for the Crown.—"I never prescribed for the prisoner, nor recommended any course of treatment, conduct, or diet whatever. I never gave, nor was asked for any advice. I concluded the disease was mental—one of those weak minds which, under little excitement, might become overthrown."

With every due consideration for these five gentlemen, as expressing themselves with undoubted sincerity and conscientiousness; with the highest respect for the medical profession, and a profound sense of the perplexities which its honourable and able members have to encounter in steering their course, when called upon to act in cases of alleged insanity—encountering often equally undeserved censure and peril, for interfering, and for not interfering!—we beg to enter our stern and solemn protest on behalf of the public, and the administration of justice, against such "*evidence of insanity*" as we have just presented to the reader. It may really be stigmatised as "The safe committal of crime made easy to the plainest capacity." It proceeds upon paradoxes

subversive of society. Moral insanity? Absurd misnomer! Call it rather "*immoral insanity*," and punish it accordingly. Is it not fearful to see well-educated men of intellect take so perverted a view of the conditions of human society—of the duties and responsibilities of its members? Absence of assignable motive an evidence of such insanity as should exempt from responsibility! Inability to resist or control a motive to commit murder a safe ground for immunity from criminal responsibility!—that "*criminal responsibility*," which," as the present Lord Chancellor,* in replying for the Crown in Oxford's case, justly remarked, "*secures the very existence of society.*"

Let us look at another aspect of the medical evidence given on this memorable occasion. Doctor the *first* pronounced his authoritative decision solely on the evidence given in court: influenced, it may be, by his having, many years before, been called in to attend the prisoner's father when labouring under symptoms of poisoning by laudanum. Doctor the *second* gave merely speculative evidence, without, as it would seem, having even previously seen the prisoner, and founded solely on what had passed at the trial. Doctor the *third* never saw the prisoner before the trial but once, and then for "*perhaps half an hour*," on the first day of the trial, or the day before it! How potent that half-hour's observation! Doctor the *fourth* saw the prisoner with doctor the third, for "*perhaps three-quarters of an hour*!" Doctor the *fifth* was a practising surgeon of not four years' standing—owning how "*short a time he had been in practice.*" Let us only surrender our understandings to this queer quinary, and we arrive at a short and easy solution: very comfortable, indeed, for the young gentleman at the bar, who is doubtless filled with wonder at finding how sagaciously they saw into the thoughts which had been passing through his mind—the precise state of his feelings, views, objects, and intentions, when he fired at the Queen. But in the

* Afterwards Lord Truro.

mean time we ask, can it be tolerated that medical gentlemen should thus usurp the province of both judge and jury? We answer, no! and shall place here on record the just and indignant rebuke of Mr Baron Alderson to a well-known medical gentleman, who had thus authoritatively announced his conclusion on the recent trial of Robert Pate.

Dr ————"From all I have heard to-day, and from my personal observation, I am satisfied the prisoner is of unsound mind."

Baron Alderson.—"Be so good, Dr ———, as not to take upon yourself the functions of both the judge and the jury. If you can give us the results of your scientific knowledge in this point, we shall be glad to hear you; but while I am sitting on this bench, *I will not permit any medical witness to usurp the functions of both the judge and the jury.*"

It has already been stated that it fell to the lot of Sir Thomas Wilde to reply for the Crown, in Oxford's case, as in that of Frost; and he discharged the responsible duty with his usual clearness and cogency. As to the facts, irrespective of the question of insanity, a single sentence disposed of them.

"What would be the condition of society—exposed as we all are to such attacks, and the infliction of death by such means—if, with the evidence of previous preparation of the means; the use of balls and pistols; inquiries as to the effect of their discharge, and whether the party was hurt, coupled with admission, incidental and direct, of the fact that balls were in the pistols: what would be the state of society, if evidence like this left an assassin the chance of escape merely because the balls could not be found?"

And, with this terse summary of the proved facts before our eyes, we ask a question of our own: What overwhelming evidence of insanity would not an intelligent and honest jurymen require, to refer such a case to the category of criminal irresponsibility?

Sir Thomas Wilde vigorously and contemptuously crushed under foot the

mischievous sophistries of the medical evidence.

"If eccentric acts were proof of insanity, many persons who were wrenching knockers off doors, knocking down watchmen, and committing similar freaks, were *laying up a large stock of excuses for the commission of crimes!*"

"The trick of laughing suddenly, without cause, was so common, that if this were token of imbecility, the lunatic asylum would overflow with gigglers."

"The prisoner had all along displayed a morbid desire to be talked about; and the letters and documents produced had been written with that feeling and object. A criminal should not be permitted to write out for himself a certificate of lunacy!"

"Was his making no attempt to escape, a proof of an unsound mind? If he *had* made such an attempt, it would have been a great proof of madness! He was surrounded on all sides by the multitude. He took such a reasonable view of his situation, as to see that he had no chance of escape, and gave himself up quietly!"

"The prisoner had been allowed the unrestrained use of firearms and powder, and was well acquainted with their fatal effects on human life. Would his mother have *trusted a madman with them?* and left her mad son in the same house with her daughter?"

"The medical men went to Newgate *pre-disposed and pre-determined to see a madman.*"

"Suppose the prisoner unfeeling, violent, indifferent to his own fate, and preferring notoriety to any other consideration: what evidence did that supply of his being in a state of moral irresponsibility—that moral irresponsibility which secured the very existence of society?"

All this surely sounds like an irresistible appeal to good sense.

Lord Denman directed the jury with corresponding clearness and decision, and also in full conformity with the views of the Solicitor-General, and with the subsequent annunciation of the law by the Judges.*

* *Ante*, p. 298.

"If you think the prisoner was, *at the time*, labouring under any delusion which prevented him from judging of the effects of the act he had committed, you cannot find him guilty. He might, perhaps, have been labouring under a delusion affecting every part of his conduct, and not directed to one object alone: if that were so at the time of his firing, he could not be held accountable for it. But if, though labouring under a delusion, he fired the loaded pistols at the Queen, knowing the possible result—though forced to the act by his morbid love of notoriety—he is responsible, and liable to punishment."

"There may be cases of insanity, in which medical evidence as to *physical* symptoms is of the utmost consequence. But as to *moral insanity*, I, for my own part, cannot admit that medical men have at all more means of forming an opinion, in such a case, than are possessed by gentlemen accustomed to the affairs of life, and bringing to the subject a wide experience."

"The mere fact of the prisoner's going into the park, and raising his hand against the Queen, is not to be taken as a proof of insanity—particularly if we suppose that he is naturally reckless of consequences. It is a mark, doubtless, of a mind devoid of right judgment and of right feeling; but it would be a most dangerous maxim, that the mere enormity of a crime should secure the prisoner's acquittal, by being taken to establish his *insanity*. Acts of wanton and dangerous mischief are often committed by persons who *suppose* that they have an adequate motive; but they are sometimes done by those who have *no* adequate motive, and on whom they can confer no advantage. A man may be charged with slaying his father, his child, or his innocent wife, to whom he is bound to afford protection and kindness; and it is most extravagant to say that this man cannot be found guilty, because of the enormity of his crime!"

The jury, thus charged with the principles of a humane and sound jurisprudence, retired, and after three-

quarters of an hour's absence returned with this special verdict:—"We find the prisoner, Edward Oxford, guilty of discharging the contents of two pistols; but whether or not they were loaded with ball, has not been satisfactorily proved to us—he being of unsound mind at the time." In other words, "We find that he did not fire a pistol loaded with ball, because he was not of sound mind!" They were sent back, with a mild intimation that this was nonsense; that they had not sufficiently applied their minds to the true question—viz., Did the prisoner, ay or no, fire a pistol loaded with ball at the Queen? The foreman, "We cannot decide the point, because there is no satisfactory evidence produced before us, to show that the pistols were loaded with bullets." They retired, to return with a verdict of "'Guilty,' or 'Not Guilty,' on the evidence." After an hour's absence, they finally brought back their verdict, "Guilty, he being at the time insane!"

Lord Denman.—"Do you acquit the prisoner, on the ground of insanity?"

Foreman of the Jury.—"Yes, my lord; that is our intention."

Lord Denman.—"Then the verdict will stand thus: 'Not guilty, on the ground of insanity.' The prisoner will be confined in strict custody, as a matter of course."

"The prisoner," says Mr Townsend,* "walked briskly from the bar, apparently glad that the tedious trial was over."

Upon the whole matter we are of opinion,—*First*, That there was satisfactory evidence that the pistols were loaded with ball, and that the jury ought to have found their verdict accordingly. *Secondly*, If they remained of opinion, to the last, that there was no satisfactory evidence on this point, they ought unquestionably to have pronounced the prisoner Not Guilty, independently of any question as to the prisoner's state of mind. In Scotland, the jury would, in such a case, have returned a verdict of *Not Proven*; but in England, deficient evidence—i. e., such as leaves the jury finally in

doubt—is regarded as leaving the charge unproved, and requiring the verdict of Not Guilty. *Thirdly*, The defence of insanity utterly failed, and the evidence offered in support of it was scarcely worthy of serious consideration. *Lastly*, It is possible that the verdict was given, though by men anxiously desirous of acting with mingled mercy and justice, under a condition of mental irresolution and confusion, and with a deficiency of moral courage. The jury either shrank from the fearful consequences of a verdict of Guilty, on a charge of high treason, and yet feared to let the prisoner loose again upon society; or there was a compromise between those who believed that there *was*, and there was *not*, sufficient evidence of the pistols having contained bullets; and also between those who were similarly divided on the subject of the prisoner's sanity. Thus stood, thus stands, the case; and Oxford has ever since been an inmate of Bedlam: though Mr Taylor, to whose work on "Medical Jurisprudence" we have already referred, and who is a decided and able supporter of that theory of "moral insanity" to which we, in common with all the Judges, are so strongly opposed, admits expressly that, with the exception of M'Naughten's case, "there is perhaps none on record, in English jurisprudence, where the facts in support of the plea of insanity were so slight as in that of Oxford."†

M'NAUGHTEN'S CASE.

The case of Daniel M'Naughten, which was tried at the Old Bailey about two years and a half after that of Oxford, viz., on the 3d and 4th March 1843, cannot be approached without a shudder, as one recalls the direful deed for which he was brought to trial—the assassination of Mr Drummond, whom the murderer had mistaken for the late Sir Robert Peel! To a candid philosophical jurist, this case is one of profound interest, and of considerable difficulty. The abrupt

* TOWNSEND, vol. i. p. 150.

† *Medical Jurisprudence*, p. 801.

interposition of the presiding Judge, the late Chief-Justice Tindal,—a step unusual on such an occasion, and especially so in the case of that signally patient and cautious Judge,—occasioned much remark at the time; and a general, if not almost universal expression of regret, that he had not allowed a case of such magnitude to run on to the end, and so have afforded the jury the vast advantage of hearing that consummate reasoner and lawyer Sir William Follett's commentary upon the case, set up in behalf of the prisoner. The unexpected issue of this dreadful case led, as has been already explained, to Parliamentary discussion, and a solemn declaration by the assembled Judges of England of the true principles applicable to such cases. We shall not examine the proceedings as minutely as in the case of Oxford; but endeavour to enable the thoughtful reader to apply to the leading facts the rules of law laid down by the Judges for the conduct of these critical investigations. He can then form an opinion as to what might have been the result, if those principles had been strictly adhered to, and the case had gone on to its legitimate conclusion. It will be borne in mind that, as stated at the close of our account of Oxford's case, even Mr Taylor treats the case of M'Naughten as an acquittal proceeding on facts, alleged in support of the defence of insanity, "as slight as those in Oxford's case!"

Mr Drummond, the private secretary of the late Sir Robert Peel, then prime-minister, was returning alone to his residence in Downing Street, having just quitted Drummond's banking-house at Charing Cross, in the afternoon of Friday the 20th January 1843, when a man, Daniel M'Naughten, came close behind him, and deliberately shot him in the back with a pistol which he had been seen to take from his left breast. While Mr Drummond staggered away, and the man who had shot him was seen quickly, but deliberately, taking another pistol from his right breast with his left hand, cocking it, and then transferring it

to his right hand, he was tripped up by a police officer; and a desperate struggle occurred on the ground, during which the pistol went off, providentially without injuring any one. M'Naughten strove to use his right arm against the officer, but was overpowered, the pistols taken from him, and he was led to the station-house. As he went, he said "*He*" [or "*she*"—the witness was uncertain which word was used] *shall not break my peace of mind any longer.*" On being searched, a banker's receipt for £745, two five-pound notes, four sovereigns, and ten copper percussion caps fitting the nipples of the pistols which he had discharged, were found on his person; while bullets exactly fitting the barrels were discovered at his lodgings. The unfortunate gentleman who had been thus assassinated, died, after great suffering, on the 25th January. He had borne a strong personal resemblance to the late Sir Robert Peel; and it was beyond all doubt that it had been Sir Robert Peel whom M'Naughten thought he had shot, and had intended to shoot. On the ensuing morning, when asked if he knew whom he had shot, he replied, "It is Sir Robert Peel, is it not?" and on being reminded that what he said might be given in evidence, he replied quickly, "*But you won't use this against me?*" He had shortly before said that, when brought before the magistrate, he would "give a reason, a short one," for what he had done; and also observed, that he was an object of persecution by the Tories—that they followed him from place to place with their persecution. He appeared calm; and gave a correct and connected account of his recent travelling movements. He was the natural son of a turner at Glasgow, from which, some months previously, he had come to London, and had then paid a short visit to France. Down to the moment of his committing this appalling act, he had been a man of rigorously temperate habits; and no one with whom he lodged or associated, entertained the slightest suspicion that his reason was in any way affected: though he

appeared peculiarly reserved, and even sullen, which his landlady had attributed to his being out of a situation and poor; for, though punctual in his small payments, he was frugal even to parsimony. She had no idea that he possessed so large a sum as £750. During the previous fortnight, he had been observed loitering so suspiciously in the neighbourhood of Sir Robert Peel's private and official residences, as to challenge inquiry, which he parried by casual observations. In the month of November previously, he had remarked to a companion, on being shown Sir Robert Peel's house in Whitehall, "D——n him! Sink him!" or words to that effect. His other remarks were perfectly rational, and his companion entertained no notion "that his mind was disordered." The following two documents in his handwriting, dated in the May and July preceding the murder, are very remarkable, as indicating great caution, shrewdness, and thrift on the part of the writer. The first was addressed to the Manager of the Glasgow Bank, and is as follows:—

GLASGOW, 23d May 1842.

"SIR,—I hereby intimate to you, that I will require the money, ten days from this date, which I deposited in the London Joint-Stock Bank through you. The account is for £745. The account is dated August 28th 1841, but is not numbered! As it would put me to some inconvenience to give personal intimation, and then remain in London till the eleven days' notice agreed upon has expired, I trust this will be considered sufficient.—Yours, &c.

"DANIEL M'NAUGHTEN."

Two months afterwards, viz., in July, he purchased the fatal pistols of a gunsmith near Glasgow, giving him very precise directions as to their make, and on the 19th of July replied to the following advertisement, which appeared in the *Spectator* newspaper of the 16th of July:—

"OPTIONAL PARTNERSHIP. — Any gentleman, having £1000, may invest them, on the most advantageous

terms, in a very genteel business in London, attended with no risk, with the option, within a given period, of becoming a partner, and of ultimately succeeding to the whole business. In the mean time, security and liberal interest will be given for the money. Apply by letter to B. B., Mr Hilton's, bookseller, Penton Street, Pentonville."*

M'Naughten's answer, which here follows, cannot be too closely scrutinised, and its general tone and tendency too anxiously weighed, by a dispassionate judicial mind, regard being had to the evidence hereafter to be adverted to, with reference to the alleged condition of the writer's mind, long previously to, at, and after the date of the letter.

GLASGOW, 19th July 1842.

"SIR,—My attention has been attracted to your advertisement in the *Spectator* newspaper, and as I am unemployed at present, and very anxious to obtain some, I have been induced to write, requesting you to state some particulars regarding the nature of the business in which you are engaged. If immediate employment can be given or otherwise, what sort of security will be given for the money, and how much interest? I may mention that I have been engaged in business on my own account for a few years, am under thirty years of age, and of very active and sober habits.

"The capital which I possess has been acquired by the most vigilant industry, but, unfortunately, does not amount to the exact sum specified in your advertisement. If nothing less will do, I will be sorry for it, but cannot help it; if otherwise, have the goodness to write to me at your earliest convenience, and address D. M. N., 90 Clyde Street, Anderton's front land, top flat."†

He went to London during the same month; appears to have gone for about a fortnight to France, returning to Glasgow; went a second time to Lon-

* TOWNSEND, p. 337.

† Ibid. 338.

don in September, and resided there, in the lodgings which he had formerly occupied, down to the day on which he shot Mr Drummond. His landlady accurately described his habits, and stated that "she never thought him unsettled in his mind;" and, on the very morning of the fatal day, "did not observe anything about his manner." Such was the tenor of all the evidence offered for the prosecution—some of it stretching back to the years 1840, 1841, when he attended anatomical lectures in Glasgow. A Writer to the Signet, who also attended them, and the physician who lectured, expressly declared that they had never seen anything in him to indicate "disordered mind," or that "he was not in his right senses."

The following was the statement which he made and signed, when examined on the charge at Bow Street. This document, like the preceding, is worthy of great consideration:—

"The Tories in my native city have compelled me to do this. They follow and persecute me wherever I go, and have entirely destroyed my peace of mind. They followed me into France, into Scotland, and all over England: in fact, they follow me wherever I go. I cannot get no rest for them night or day. I cannot sleep at night, in consequence of the course they pursue towards me. I believe they have driven me into a consumption. I am sure I shall never be the man I formerly was. I used to have good health and strength, but I have not now. They have accused me of crimes of which I am not guilty; they do everything in their power to harass and persecute me; in fact, they wish to murder me. It can be proved by evidence. That's all I have to say."*

On Thursday the 2d February, that is to say, exactly a fortnight after the murder, M'Naughten was arraigned at the Old Bailey. When called upon, in the usual manner, to say whether he was Guilty or Not Guilty, he remained silent, with his eyes directed steadily towards the bench. At

length, on being authoritatively required to answer, he said, after some hesitation, "I was driven to desperation by persecution." On being told that he must answer, "Guilty," or "Not Guilty," he replied that he was guilty of *firing*. On this Lord Abinger interposed, "By that, do you mean to say you are not guilty of the remainder of the charge—that is, of *intending to murder Mr Drummond?*" The prisoner at once said "Yes;" on which Lord Abinger ordered a plea of Not Guilty to be recorded. It appears to us that there is great significance in what passed on this occasion.

An application was then made to postpone the trial, on affidavits stating that, by the next session, material evidence could be adduced to show the insanity of the prisoner when he shot Mr Drummond. The Attorney-General, Sir Frederick Pollock, at once humanely assented to the application, and it was granted; as also ample funds, out of the £764 found on the prisoner, to prepare effectively for the defence. Let us here pause for a moment, to contrast the treatment which M'Naughten—whose undisputed act had filled the whole country with horror and indignation—received on this occasion, with that experienced by his predecessor Bellingham, thirty years before, whose case closely resembled that of M'Naughten in some fearful points. We can with difficulty record calmly that Bellingham's counsel, fortified by strong affidavits of the prisoner's insanity, and that witnesses knowing the fact could be brought from Liverpool and elsewhere, applied in vain for a postponement of the trial; the Attorney-General of that day barbarously, and even offensively, opposing the application, which was consequently at once overruled. Within seven days' time, Bellingham shot Mr Percival, was committed, *tried*—if it be not a mockery to use the word—convicted, and executed. On Monday, the 11th May 1811, Bellingham shot his unfortunate victim, and on that day week, Monday, the 18th May 1811, the assassin's dead body lay on the

* TOWNSEND, vol. i. p. 345.

'dissecting-table ! This vindictive precipitancy affords an awful contrast to the humane temper in which M'Naughten's application was entertained by the Attorney-General, the Judge, and the justly-excited country at large. It supplied the eloquent advocate, the present Solicitor-General,* Sir Alexander Cockburn,—who was subsequently retained by the prisoner,—with a potent weapon of defence, of which he failed not to make effective use. It is not too much to say, that all who can concur in the acquittal of M'Naughten, must regard Bellingham as judicially murdered. We concur heartily with M'Naughten's advocate in the remark, that "few will read the report of Bellingham's trial without being forced to the conclusion that he was either really mad, or, at the very least, the little evidence which alone he was permitted to adduce, relative to the state of his mind, was strong enough to have entitled him to a *deliberate and thorough investigation of his case.*"†

On Friday, March 3d, M'Naughten took his trial before the late Chief-Justice Tindal, the late Mr Justice Williams, and Mr Justice Coleridge. The prosecution was conducted by the late Sir William Follett, then Solicitor-General, and the prisoner defended by the present Solicitor-General, then Mr Cockburn, Q.C. Nothing could exceed the temperate and luminous opening statement of Sir William Follett, who, in our judgment, laid down the rules of English law, applicable to the difficult and delicate subject with which he had to deal, with rigorous propriety.

* Now [1854] Attorney-General.

† We have heard high authorities strongly disapprove of the conviction and execution of Bellingham; and it certainly appears impossible to reconcile with true principles of jurisprudence, the different fates awarded to Bellingham and M'Naughten, supposing the facts to be, as alleged, in each case. A military officer, present at the execution of Bellingham, and very near the scaffold, told us that he distinctly recollects Bellingham, while standing on the scaffold, elevating one of his hands, as if to ascertain whether it were raining; and he observed to the chaplain, in a calm and natural tone and manner, "I think we shall have rain to-day!"

"If you believe," said he, "that the prisoner at the bar, at the time he committed this act, was not a responsible agent—that, when he fired the pistol, he was incapable of distinguishing between right and wrong—that he was under the influence and control of some disease of the mind which prevented him from being conscious that he was committing a crime—that he did not know he was violating the law both of God and man—then undoubtedly he is entitled to your acquittal. But it is my duty to tell you that nothing short of *that* will excuse him, upon the principles of the English law. To excuse him, it will not be sufficient that he laboured under partial insanity upon some subjects—that he had a morbid delusion of mind upon some subjects, which could not exist in a wholly sane person; that is not enough, *if* he had that degree of intellect which enabled him to know and distinguish between right and wrong—if he knew what would be the effects of his crime, and consciously committed it; and if, with that consciousness, he *wilfully* committed it."

The witnesses for the prosecution established a case, if unanswered, of perfect guilt; the facts of the assassination were indisputable, and the evidence of the prisoner's sanity cogent in the extreme. Mr Cockburn addressed the jury at very great length, and in a strain of sustained eloquence and power, his object being to persuade the jury "that the prisoner was labouring, at the time of committing the act, under a morbid [?] insanity, which took away from him all power of self-control, so that he was not responsible for his acts. I do not put this case forward as one of total insanity; it is a case of delusion, and I say so from sources upon which the light of science has thrown her holy beam." Those who have read what has gone before, concerning Oxford's case, will appreciate this observation of Mr Cockburn, and gather from it his adoption, for the purpose of that defence, of the theory of moral insanity, which he enforced and illustrated by many striking and brilliant

observations, calculated to produce a strong impression on the minds of the jury; such as required the utmost exertions of Sir William Follett in reply, and finally of judicial exposition, to efface, if fallacious—or modify to any extent rendered necessary by inaccuracy or exaggeration. Ten witnesses, all of them from Glasgow, were called, for the purpose of establishing the fact that the prisoner had, for some eighteen months previously to January 1843, appeared to labour, and had continually represented himself as labouring, under a persuasion that he was the victim of some such indefinite, mysterious, and incessant persecution as he spoke of in his statement before the magistrate at Bow Street.

We are bound to say that the force of this testimony, coming chiefly from persons above all suspicion, and in a superior rank of life, is irresistible as to the existence of such an insane delusion, down to the time of his quitting Glasgow. Not a witness, however, gave evidence of his exhibiting that tendency after his last return to London, before his shooting Mr Drummond. The only mention of Sir Robert Peel's name was by one of these ten witnesses, a former fellow-lodger of the prisoner's; who told him, in July 1842, that he had heard Sir Robert Peel speak in the House of Commons; preferred his speaking to that of Lord John Russell and Mr O'Connell; and said "he thought Sir R. Peel had arrived at what Lord Byron said of him—that 'he would be something great in the state.'" Mr Cockburn asked the witness, "Did you ever, on that or any other occasion, hear him speak at all disrespectfully of Sir Robert Peel?" *Answer.*—"Certainly not." One or two witnesses spoke to singularities of demeanour as early as the years 1835 and 1836. One of his landlords, in the former year, got rid of him as a lodger, "for one reason, in consequence of the infidel doctrines he maintained, and the books of such a character which he was in the habit of reading." A witness, who had succeeded him in his business, remon-

strated with him, towards the end of 1842, about his notions as to being persecuted, telling him it was all imagination—that there were no such people as he supposed. He said that, "if he could once set his eyes on them, they should not be long in the land of the living," and became shortly afterwards very much excited. Sometimes he said he was "haunted by a parcel of devils following him." His landlady seeing the brace of pistols which he had in September, just before his return to London, said—"What, in the name of God, are you doing with pistols there?" He said 'he was going to shoot birds with them.' I never saw the pistols after that." He told the Commission of Police that the "persecution proceeded from the priests of the Catholic chapel in Clyde Street, who were assisted by a parcel of Jesuits." In August 1842, he told the same witness that "the police, the Jesuits, the Catholic priests, and Tories, were all leagued against him."

Mr Cockburn having thus "laid a broad foundation," says Mr Townsend, "for medical theories, *upon them* was built by the nine physicians and surgeons, who confirmed each other's theories, a goodly superstructure of undoubted insanity. Had the workings," continues Mr Townsend, sarcastically, "of the troubled brain been as distinctly visible to the eye, as the labours of bees seen through a glass hive, they could not have held the fact to be more demonstratively proved. Positive beyond the possibility of mistake, and infallible as theologians, they explained all that might appear without the aid of science inexplicable; and proved, as if they were stating undoubted facts, an irresponsible delusion."

One of the physicians attested his conviction, from an interview with the prisoner shortly before his trial, "as a matter of certainty, that M'Naughten was not responsible for his acts!" Well may Mr Townsend add, "By an excess of lenity, the counsel for the prosecution allowed these scientific witnesses to depart from the ordinary

rules of evidence, *to give their own conclusions from the facts proved, and usurp the province of the jury.*" * After going through the evidence (if the word can be used with propriety under such circumstances) of the other medical gentlemen, Mr Townsend observes, "Each physician and surgeon, as he stepped into the witness-box, seemed anxious to surpass his predecessor in the tone of decision and certainty; each tried to draw the bow of — (mentioning the first physician who had been called, and who had also been called in Oxford's and Pate's case, in which latter he was rebuked by Baron Alderson),† and shoot, if possible, still further into empty space." And this gentleman, Dr —, had asserted, under cross-examination by Sir William Follett, "his positive conviction that he could ascertain the nicest shade of insanity! that the shadowy trace of eccentricity, dissolving into madness, could be palpably distinguished!" ‡ The last of these confident personages was permitted to make this extraordinary statement: "I have not the slightest hesitation in saying that the prisoner is insane, and that he committed the offence in question whilst afflicted with a delusion under which he appears to have been labouring for a considerable length of time!!!"

We feel constrained to say that this appears to us, in every way, monstrous.

"Nine medical witnesses," significantly observes Mr Townsend, "had now spoken, with a wonderful unanimity of opinion, *and the court surrendered at discretion.*" §

If such a course is to be allowed again in a court of justice, what security have any of us for life, liberty, or property?

Chief-Justice Tindal here interposed, to ask Sir William Follett whether he was prepared with evidence on the part of the Crown to combat that of the medical witnesses,—

"Because, if you have not," said the Chief-Justice, "we think we are

under the necessity of stopping the case. Is there any medical evidence on the other side?"

Sir William Follett. — "No, my lord." ¶

Chief-Justice Tindal. — "We feel the evidence, especially that of the last two medical gentlemen who have been examined, and who are strangers to both sides, and only observers of the case, to be very strong, and sufficient to induce my learned brothers and myself to stop the case." ¶

After this authoritative intimation from the court, in a capital case, in favour of the prisoner, it would have been obviously to the last degree inexpedient for the Solicitor-General, in his position of peculiar and great public responsibility, to "press for a verdict against the prisoner." Saying distinctly, and therefore telling the jury, that, "after the intimation he had received from the Bench, he felt that he should not be properly discharging his duty to the Crown and the public, if he asked them for a verdict against the prisoner," he withdrew, in deference to "the very strong opinion entertained by the Lord Chief-Justice, and the other learned Judges present," that the evidence, especially the medical evidence, sufficed to show that the prisoner, when he shot Mr Drummond, was labouring under insanity. "If he were so," added Sir William Follett, with a pointed reservation of his own opinion, "he would be entitled to his acquittal." He intimated, however, distinctly, that he adhered to "the doctrines and authorities" on which he had relied in opening the case, "as being correct law; our object being to ascertain whether the prisoner, at the time when

¶ It is said that the two physicians selected by Government to examine the prisoner, in company with those who did so on behalf of the defence, did not differ from them in opinion; and Mr Cockburn taunted Sir William Follett with not having called them, though they sat beside him in court. By that time Sir William Follett might have seen, during the progress of the trial, sufficient to make him distrust medical evidence altogether, come from whom it might. — TOWNSEND, vol. i. p. 378.

¶ Ibid. 400.

* TOWNSEND, i. 398.

† *Ante*, p. 309.

‡ TOWNSEND, i. 396.

§ *Ibid.* 400.

he committed the crime, was—at *that time*—to be regarded as a responsible agent, or whether all control over himself was taken away. The learned Judge, I understand, means to submit that question to you. I cannot press for a verdict against the prisoner, and it will be for you to come to your decision."

The Chief-Justice then briefly addressed the jury, offering to go through the whole evidence, if the jury deemed it necessary, which *he* "thought to be almost unnecessary;" adding—

"I am in your hands; but if, in balancing the evidence in your minds, you think that the prisoner was, at the time of committing the act, capable of distinguishing between right and wrong, then he was a responsible agent, and liable to all the penalties which the law enforces. If not so—and if, in your judgment, the subject should appear involved in very great difficulty—then you will probably not take upon yourselves to find the prisoner guilty. If that is your opinion, then you will acquit the prisoner. If you think you ought to hear the evidence more fully, in that case I will state it to you, and leave the case in your hands. Probably, however, sufficient has now been laid before you, and you will say whether you want any further information."

Foreman of the Jury.—"We require no more, my lord."

Chief-Justice Tindal.—"If you find the prisoner not guilty, say on the ground of insanity; in which case proper care will be taken of him."

Foreman.—"We find the prisoner not guilty on the ground of insanity."

We repeat emphatically our deep respect for the late Chief-Justice Tindal, and for his brethren who sat beside him on this momentous occasion; and we also acknowledge the weight due to the observation of Mr Townsend, that "none can form so correct an estimate of the facts proved, and their illustration by science, as those who actually saw what was going on; and the three able Judges who presided seem to have been fully impressed

with the conviction that the prisoner ought not to be considered amenable to punishment for his act, being insensible, at the time he committed it, that he was violating the law of God and man."

And, again, "It is far more just and merciful to take care alike of the accused and of society, by confining in secure custody the doubtfully conscious shedder of blood, than to incur the fearful hazard of putting to death an irresponsible agent."* Nevertheless, we concur in the unanimous opinion of the five law lords, expressed in their places in Parliament—the Lord Chancellor, Lord Brougham, Lord Cottenham, Lord Denman, Lord Campbell—that it would have been better to let the trial proceed regularly to its conclusion. The whole facts of the case demanded, not less than the theories of the medical witnesses, that thorough sifting, and the application of that masterly and luminous practical logic, which both the Solicitor-General and the Chief-Justice were so pre-eminently capable of bestowing. If, after such a dealing with the case, an acquittal on the ground of insanity had ensued, who could have gainsaid it? At present, see what a candid and scientific writer on medical jurisprudence, as we have several times observed, a strong favourer of the notion of moral insanity, has felt himself compelled to place permanently on record,† with reference to the acquittal of M'Naughten.

"When we find a man lurking for many days together in a particular locality, having about him loaded weapons—watching a particular individual who frequents that locality—a man who does not face the individual and shoot him, but who coolly waits until he has an opportunity of discharging the weapon unobserved by his victim or others—the circumstances appear to show such a perfect adaptation of means to ends, and such a power of controlling his actions, that one is quite at a loss to understand why a plea of irresponsibility should

* TOWNSEND, vol. i. p. 325.

† TAYLOR'S *Medical Jurisprudence*, p. 799.

be admitted, except upon the fallacious ground that no motive could be discovered for the act—a ground, however, which was not allowed to prevail in the case of Courvoisier, Francis, and the perpetrators of other atrocious crimes. Observe the lively sense of his danger, and of his rights and interests, as an accused person, exhibited by M'Naughten almost immediately after committing the act—when, fearful lest an inadvertent admission should be given in evidence against him, he said to the officer*—*'But you won't use this against me?'* Note the matter-of-fact astuteness with which he attended to his pecuniary interests in May and July; the total absence of any evidence of the existence of his delusions during his last sojourn in London; the presence of such proof of careful, deliberate, and too successful perpetration, as to time, opportunity, and means; his expression in November towards Sir Robert Peel—*'D——n him!'* But, above all, is to be noted the time when he first gives utterance to anything directly and cogently favouring the notion on which his life depended—his insane delusion with regard to Sir Robert Peel—viz., after he had been for some time incarcerated in Newgate, and when he knew that he was being examined by a physician, in order to ascertain what had been his state of mind at the time in question! Dr Munro has there recorded it.† He said—*'Mr Salmond, the Procurator-Fiscal, Mr Sheriff Bell, Mr Sheriff Alison, and Sir Robert Peel, might have put a stop to this system of persecution if they would!'* * * * *'We were afraid of going out after dark for fear of assassination: that individuals were made to appear before him like them he had seen in Glasgow.'* * * * *'That he imagined the person at whom he fired at Charing Cross to be one of the crew—a part of the system that was destroying his health. He observed, that, when he saw the person at Charing Cross at whom he fired, every feeling of suffering which he had endured for months and years*

rose up at once in his mind, and that he conceived that he should obtain peace by killing him.'

Surely it would have conduced, especially in the painful excitement of the public mind on the subject at the time, to the satisfactory administration of justice, if it had been allowed Sir William Follett, without his being placed in the invidious position of appearing to press unduly against a prisoner being tried for his life, to combine and contrast these various circumstances, as he, of almost all men, could have best combined and contrasted them. The jury should have had their minds solemnly and authoritatively directed to the question, for instance, whether this last observation of M'Naughten made to Dr Munro was a spontaneous, genuine indication of utterly subverted mental faculties, continuing from the moment of his shooting Mr Drummond; or an effort of anxious astuteness to give effect to the suggestion which he may have believed would save his life. And, moreover, this and other circumstances should have been accompanied by a direction to the jury, in accordance with that of Lord Denman in Oxford's case,‡ and with the following canon, subsequently laid down by the Judges in their answer to the first question proposed by the Lord Chancellor§—viz., *"That notwithstanding the party did the act with a view, under insane delusion, of redressing or revenging some supposed grievance or injury, he is nevertheless punishable, if he knew at the time that he was acting contrary to the law of the land."* Could M'Naughten be again tried on this charge, this is the precise question which would be left to the jury. Mr Alison, in his *"Principles of the Criminal Law of Scotland,"*|| thus lays down the rule applicable to such cases, in commenting on that of Bellingham:—

"Unquestionably, the mere fancying a series of injuries to have been received will not serve as an excuse for murder—for this plain reason, that, supposing it true that such injuries had been received, they would have

* *Ante*, p. 312. † TOWNSEND, i. 395.

‡ *Ante*, p. 310. § *Ibid.* p. 298. || P. 658.

furnished no excuse for the shedding of blood. On the other hand, however, such an illusion as depriving the pannel of the sense that *what he did was wrong*, amounts to legal insanity, though he was perfectly aware that murder in general was a crime."

Responsibility more awful than is devolved upon all parties to the judicial investigation of this question, can scarcely be imagined. A deliberate and thorough investigation of every, even the minutest circumstance adduced, guided steadily by correct legal principles, is demanded imperiously by justice. Difficult, almost hopeless, as may be the attempt to grope into the turbid mind of a madman, to ascertain its true condition at a given moment of time, the attempt *must* be made, a decision *must* be pronounced—distinguishing between real and simulated imbecility or madness—between irresponsible insanity and responsible eccentricity. These are questions, we repeat, of infinite importance, of great difficulty; and the interests of the entire community, and of individual members of it, demand a steady adherence to the principles of a humane and enlightened jurisprudence. Recent dreadful instances have served to remove several sources of dangerous error, in dealing with these cases of criminal jurisprudence. No one dare now infer madness from the mere *absence of motive*, and from the *very enormity of the act committed*; nor accord immunity to the fancied victim of "*uncontrollable impulse*." That is, at all events, a point gained in favour of society. In England, at all events, we sternly repudiate this last sickly and spurious theory, which would place the innocent and virtuous entirely at the mercy of the most base and ruffianly impulses of our fallen nature. It would relax all the bonds of self-restraint, and afford a premium on the indulgence of ungovernable passions.

The recent lamentable case of Robert Pate affords a valuable illustration of the truth of these remarks; and Mr Baron Alderson's charge to the jury not only conduced to the firm adminis-

tration of justice in the particular case, but was calculated to be of great and permanent public service, by dispelling the morbid and mischievous notions which have latterly prevailed, and exhibiting expressively the stern simplicity and common sense of English law. On the 27th June last, a gentleman, who had only recently sold his commission in the 10th Hussars, and was residing as a gentleman of fortune in London, suddenly struck her Majesty on the forehead a violent blow with a cane, which actually caused blood to flow! He could give no account of his reason for committing this execrable outrage; but the defence set up for him was, simply, uncontrollable impulse; and evidence was adduced certainly showing him to be of a very eccentric character, and actuated by strange whims and delusions. He was tried on the 12th July last at the Old Bailey, before Baron Alderson, under statute 5 and 6 Vict. c. 51, § 2.* The indictment contained three counts, charging him with striking the Queen "with an offensive weapon—that is, a stick," with intent (1st) to injure her person; (2d) to alarm her; (3d) to break the public peace. Again came the doctors—one speaking of "some strange sudden impulse, which he was quite unable to control;" and the other confidently pronouncing the prisoner to have been insane. The jury convicted the prisoner on the first and third counts, which the judge told them had been clearly made out by evidence, discarding the defence of insanity; and the following was the summing-up of Mr Baron Alderson, in strict accordance with the principles laid down in 1843 by the judges:†—

"The law throws on the prisoner the *onus* of proving that, at the time the offence was committed, he was in an unsound state of mind: and you will have to say, after hearing my explanation of the law, whether this has been made out to your satisfaction. In the first place, you must clearly understand that it is not because a man is insane that he is unpunishable: and I must say, that *upon this point there*

* *Ante*, p. 302.

† *Ibid*. p. 298.

exists a very grievous delusion in the minds of medical men. The only insanity which excuses a man for his acts is that species of delusion which conduced to, and drove him to commit, *the act alleged against him.* If, for instance, a man, being under the delusion that another man would kill him, killed that other, for, as he supposed, his own protection, he would be unpunishable for such an act; because it would appear that the act was done under the delusion that he could not protect himself in any other manner: and there the particular description of insanity conduced to the offence. But, on the other hand, if a man has a delusion that his head is made of glass, that will be no excuse for his killing a man. He would know very well that, although his head were made of glass, that was no reason why he should kill another man, and that it was a wrong act; and he would be properly subjected to punishment for that act. These are the principles which ought to govern the decision of juries in such cases. They ought to have clear proof of a formed disease of the mind—a disease existing before the act was committed, and which made the person accused incapable of knowing, at the time he did the act, that it was a wrong act for him to do. This is the rule which I shall direct you to be governed by. Try the case by this test. Did this unfortunate gentleman know, at the time, that it was wrong to strike the Queen on the forehead? Now, there is no doubt that he was very eccentric in his conduct; but did that eccentricity disable him from judging whether it was right or wrong to strike the Queen? Is *eccentricity* to excuse a man for any crime he may afterwards commit? The prisoner is proved to have been perfectly well aware of what he had done immediately afterwards, and in the interview which he had had since with one of the medical gentlemen, he admitted that he knew perfectly well what he had done, and ascribed his conduct to some momentary uncontrollable impulse. The law does not acknowledge such

an impulse, if the person was aware that it was a wrong act he was about to commit; and he is answerable for the consequences. A man might say that he picked a pocket from some uncontrollable impulse; and, in that case, the law would have an uncontrollable impulse to punish him for it. What evidence is there, then, in this case, to justify you in coming to the conclusion, that when the prisoner struck the Queen, he did not know it was a wrong act—in fact, that what he was doing was wrong?—[Mr Baron Alderson then read over the whole of the evidence for the defence, commenting upon it as he proceeded.]—That the prisoner is an object of commiseration, is quite clear; and that he should also have been taken better care of, is equally true: but the question you have here to decide is, Are you satisfied that, at the time, he was suffering from a disease of the mind which rendered him incapable of judging whether the act he committed towards the Queen was a right or a wrong act for him to do? If you are not satisfied of this fact, you must say that he is guilty; but if you think he was not aware what he was about, or not capable of distinguishing between right and wrong, you will then say that he is not guilty, on the ground of *insanity.*"

If the case of M'Naughten had been thoroughly tried out; if the medical witnesses, above all, had been checked, and restrained within their proper province, as they were by Baron Alderson; and if the summing-up by the Chief-Justice had been in accordance with that of Baron Alderson in Pate's case—we do not venture to say what would have been the result: but whatever it might have been, it would have satisfied the country. Whether, at the moment when M'Naughten took out his long-prepared pistol, and, after a fortnight's watching, fancied he had found Sir Robert Peel, and deliberately shot his victim in the back; whether M'Naughten was, at that awful moment, insanely ignorant of what he was doing—utterly unaware that he

was doing wrong—is a question which there exist no longer any human means of determining; but it is open to us to examine the principles applicable to such an investigation in a court of criminal justice.

Upwards of seven years have elapsed since the trial of M'Naughten, more than ten years since that of Oxford; and both of them are, at the present moment, inmates of Bethlehem Hospital. Since commencing this article, we have been permitted, through the courtesy of the acute and able physician to whom the superintendence of that important institution has been for some years intrusted, to see and converse with the two persons with whose fate we have herein so anxiously concerned ourselves. Neither knew of our going; and we were accompanied by the gentleman in question.

M'NAUGHTEN was standing in the courtyard, dressed in the costume of the place, a pepper-and-salt jacket and corduroy trousers, with his hat on, knitting. He looks about forty years old, and in perfect health. His features are regular, and their expression is mild and prepossessing. His manner is tranquil. Usually he wears his hat somewhat slouched over his eyes, and sidles slowly away from any one approaching him, as if anxious to escape observation. On this occasion, however, he at once entered into conversation with our companion, calmly and cheerfully, and afforded us a full opportunity of watching him. Had we seen him casually elsewhere, and as a stranger, we should have thought his countenance indicative of a certain sort of cheerful quiet humour, especially while he was speaking; but to us it seemed certainly to exhibit a feeble intellect, shown chiefly by a faint flickering smile, even when he was speaking on the gravest subjects. When asked what had brought him where he was, he replied, drily, "*Fate*." "And what is fate?" "The will of God—or perhaps," he added quickly, "of the devil,—or it may be of both!" and he half-closed his eyes, and smiled. [The reader will bear in mind what was deposed at the trial, as to his in-

fidel tendencies.]* When told by us suddenly, that Sir Robert Peel was dead, he betrayed no emotion, nor exhibited the slightest interest. "One should have thought that, considering what has happened, you would feel some interest in that gentleman." He looked rather quickly at the speaker, and said calmly, with a faint smile, "It is quite useless to talk to me on *that* subject: you know quite well I have long and long ago made up my mind never to say one word about it. I never have, and I never will; and so it would be quite childish to put any questions."† * * *

"How are you, M'Naughten?" He slightly sighed, and said, "I am very uncomfortable. I am very ill used here; there is somebody [or something] always using me ill here. It is really too bad! I have spoken about it many, many times; but it is quite useless. I wish I could get away from this place! If I could just get out of this place, and go back to Glasgow, my native place, it is all I would ask for: I should be quite well there! I shall never be well or happy *here*, for there is always some one ill-using me here."

"Well, but what do they do to you?" "Oh," shaking his head and smiling, "they are always doing it; really it is too bad." "Who are they?" "Oh, I am always being ill-used here! My only wish now is, to get away from this place! If I could only once get to Glasgow, my native place!" This is the continual burthen of his song. It is needless to say that his complaints are altogether unfounded: he is treated with the utmost kindness consistent with his situation; and, as he has never exhibited violence nor ill-behaviour, it has never been necessary to resort to personal coercion, with one exception. Two or three years ago, he took it into his head that, as he could not get away, he would starve himself; and he persevered for such a length of time in refusing all kind of food, that he began to lose flesh fast.

* *Ante*, p. 316.

† This he has always said, and has adhered to his resolution.

At length he was told by the physician that, since he would not eat voluntarily, he must be made to eat ; and it was actually necessary to feed him for a considerable time mechanically, by means of the stomach pump. Under this treatment he presently regained his flesh, in spite, ludicrous as it may seem, of himself ; and at length suffered himself to be laughed out of his obstinacy, and has ever since taken his food voluntarily. He seemed himself even to be tickled by a sense of the absurdity of which he was guilty. Not a doubt of his complete insanity was entertained by my acute companion, who has devoted much observation to the case. Shortly after we had quitted him, and were out of his sight, he put away his knitting, placed his hands in his jacket pockets, and walked very rapidly to and fro, his face bent on the ground ; and he was apparently somewhat excited. Whatever may have been the state of M'Naughten at the time to which our inquiries have been directed in this article, we entertain little, if any doubt, that he is now in an imbecile condition.

OXFORD was in another part of the building, standing alone, at the extremity of a long corridor, gazing through a heavily-grated window, towards the new Houses of Parliament. His hat was on ; he was dressed like M'Naughten, and his jacket was buttoned. We scarcely recognised him, owing to the change of his dress. He is fond of attracting the notice of anybody ; and conversed about himself, and his offence, in the most calm and rational manner conceivable. He has lost much of his hair,—a circumstance which he appeared somewhat to regret, for the front of his head is bald ; but he looks no older than his real age, thirty. He is mortally weary of his confinement, and says he has been terribly punished for "his foolish act."

"Foolish !" we exclaimed—"is that all you can say of your attempt to shoot her Majesty ?" He smiled, and said, "Oh, sir, I never attempted to shoot her ; I never thought of such a thing. I aimed at the carriage-panels

only." "Then why did you put balls in your pistols ?"

"I never did," he replied quickly. "I never dreamed of such a thing. There were no balls."

"Oh, then you have not heard of the discovery that has just been made—eh ?"

"Discovery !—what ?"

"The bullets."

"Oh, there have been more found than ever I used, at least ; for I assure you I never used any !"

"What made you do what you did ?"

"Oh, I was a fool ; it was just to get myself talked about, and kick up a dust. *A good horse-whipping was what I wanted,*" he added, with a faint sigh. These were his very words.

"Should you have done it, if you had thought of coming *here* ?"

"No, indeed I should not ; it has been a dreadful punishment ! * * * I dare say public opinion [his very words !] says nothing about me now ; I dare say it thinks I have got what I very well deserve—and perhaps I have ; but possibly if I were put quietly out of the way, and sent abroad somewhere, public opinion might take no notice of it." He has taught himself French, Italian, and German, of which he has a fair knowledge. He also used to draw a little, and began to write a novel ; but it proved a sorry affair, and, being discouraged, he threw it up.

"Do you recollect," we inquired, "hearing the condemned sermon preached to Courvoisier ?"

"Oh, yes, very well. It was a most excellent sermon."

"Did Courvoisier seem to attend to it ?"

"Oh, yes, very much ; and he seemed much affected. It was certainly an appropriate sermon ; I liked it much."

"Did not you think that it might soon be your fate to sit where he was ?"

"What ! in the condemned seat ?"

"Yes."

"Oh, no ; that never occurred to me. I never expected to be condemn-

ed for high treason. Some gentleman, I forget who he was, said I should be transported for fourteen years. I thought that was the worst they could do to me; for I knew I had never meant to do any real harm, nor tried to do it."

"Yes; but the Judge and Jury thought very differently."

"Oh, I was fairly tried; but I never expected to be brought in *mad*. I was quite surprised at *that*, for I knew I was not mad, and I wondered how they were going to prove it." We asked him if he had ever seen *us*; to which he replied, gazing steadily, "Yes, I think I have—either at the Privy Council, or in Newgate Chapel."

"Where did you sit on the Sunday when the condemned sermon was preached to Courvoisier?"

"I sate on the steps near the altar."

"How were you dressed?"

"Oh, a blue surtout, with velvet collar;" and he proceeded to describe his dress almost exactly as we have described it at the commencement of the article.

He exhibits considerable cleverness: whatever he does, whether in playing at fives, or working, (*e. g.*, making gloves, &c.) he does far better than any one else, and shows considerable tact and energy in setting his companions to work, and superintending them. He admits that he committed a very great offence in having done anything to alarm the Queen, and attributes it entirely to a mischievous and foolish love of notoriety. He said "I thought it would set everybody talking and wondering;" but "never dreamed of what would come of it—least of all that I was to be shut up all my life in *this* place." * * *

"That list of conspirators, and letters from them, that were found in your lodgings—were they not real?"

"Oh, no," he replied, with rather an anxious smile, "all mere sham—only nonsense! There was never anything of the sort!"

"Then, why did you do it?"

"It was only the folly of a boy; I wasn't nineteen then—it was very silly, no doubt."

"And their swords and dresses, and so forth—eh?"

"Entirely nonsense! It was a very absurd joke. I did not think it would come out so serious. I did not *appreciate* the consequences, or I never would have done it." The word "*appreciate*" he used with a very marked emphasis.

We entertain no doubt whatever of his perfect sanity; *and if so*, as his crime was great, so his punishment is fearful.

NOTE APPENDED TO THE ABOVE PAPER, IN THE NUMBER OF "BLACKWOOD'S MAGAZINE" ENSUING THAT IN WHICH IT APPEARED.

A physician, in a responsible official situation, affording him great opportunities for observation, has addressed to us a note, from which we extract the following passages. Our only object is to aid in eliciting truth; and our anxiety to do so is proportionate to the difficulty and importance of the subject to which the ensuing letter has reference.

"The article on Oxford and M'Naughten has interested me very much; and though I cannot at all admit the principle of punishing a man for his misfortune, I am yet satisfied that the doctors have assumed too much, and have helped to let loose upon society some who deserved hanging as much as any who have ever suffered the extreme penalty. The test of insanity, as laid down by the Judges on the solemn occasion to which you refer, is manifestly of no value; for it is, I might almost say, *the exception* for an insane person *not* to know the difference between right and wrong. Many of them deliberately commit acts which they know to be wrong. Dadd killed his father, and immediately fled to France to avoid the consequences of his crime; and nobody ever doubted that he was one of the maddest, if not the maddest, of the mad. Touchet shot the gunmaker, not only with a full knowledge of the nature of the crime, but for the express purpose of

bringing about his own death. He has entertained various delusions: amongst others, the notion that certain passages of Scripture have special reference to himself personally. And, as regards those in actual confinement on account of their mental malady, the majority know perfectly well that it is wrong to tear, break, and destroy, to injure others, and indulge their various mischievous propensities. So well satisfied are many of them that they are doing wrong, that they will try to conceal acts which they know are not permitted; and, in this way, a propensity to bite, or kick, is indulged in only when it is believed that it can be done unobserved. It seems to me that, in these most painfully embarrassing cases, every one must stand on its own particular merits; and, as neither judges nor doctors can say where sanity ends, and insanity begins, so no possible rule that can be devised will be alike applicable to all; but the previous

habits and course of life of the person accused, together with the absence or presence of any motive, will go far to remove the difficulties which necessarily beset the question. I am not at all prepared to say that, because any degree of mental disturbance has been shown to exist, a person should be held *irresponsible*. It is a doctrine fraught with such dreadful danger to society, that it is very properly viewed with jealousy; but, when clearly proved that the mind was so far disturbed as to entertain delusions before and at the time of committing the offence, I would never resort to capital punishment. The Omniscient alone can tell how far the disease has gone, and to what extent the unfortunate being was really responsible for his actions to his fellow-men."

*** The author, in reprinting this Note, begs to subjoin that he adheres strongly to the opinions advocated in the preceding paper. [1854.]

MODERN STATE TRIALS.*

No. III.

THE ROMANCE OF FORGERY.

A BOLD stroke for a peerage, certainly, was that of "Alexander Humphreys, *otherwise* Alexander, claiming the title of Earl of Stirling," whether the reader be disposed to accept or repudiate the verdict pronounced by an Edinburgh jury, after a week's trial before the High Court of Justiciary, in the year 1839. This gentleman stood at the bar charged with having concocted a wonderful scheme of fraud and forgery, the alleged object of which was neither more nor less than to win the title of Earl of Stirling, with great estates and territories in Scotland and British North America, and the right of creating Nova Scotia Baronets! The indictment charged him with "using and uttering as genuine, forged documents, knowing the same to be forged;" with "wickedly and feloniously fabricating false and simulate writings, to be used as evidence in courts of law, and so using the same as genuine, and knowingly uttering and using them as such, by producing the same as evidence in courts of law, having formed the fraudulent design of procuring himself to be recognised as Earl of Stirling in Scotland, and of obtaining certain great estates or territories in North America and Scotland, with the pretended right of conferring the honours and bestowing the titles of Baronets of Nova Scotia, as being the representative, and entitled to the honours, privileges, and estates of William, first Earl of Stirling; and of procuring loans or ad-

vances of money from ignorant and credulous persons on the faith of his being entitled to those estates and privileges, as he falsely represented." He sate, sustaining the burthen of this fearful charge, beside an officer and a gentleman of spotless honour, and of distinction in the military service, who thereby signified his complete conviction of his friend's innocence, with chivalrous devotion—a circumstance very singular in the eyes of an English lawyer. This gentleman was Colonel George Charles D'Aguilar, Deputy Adjutant-General of the Forces in Ireland. "I was treated with such affectionate kindness and hospitality," said he, with moving simplicity, in giving his evidence, "when we were class-fellows at school, near Birmingham, and where he invariably took me with him to his father's house, as I shall never forget; it was, indeed, unbounded: and I am here this day to repay it." For thirty years, however, while the Colonel was on service in India, he and the prisoner were separated; but on the former's return in 1829, he renewed the intimacy, *i. e.*, ten years before the trial, and kept up that intimacy personally and by correspondence. "He wrote to me," said the Colonel, "about his claims; and there was no event of his life, more especially if connected with the proceedings regarding his title, which he did not communicate with the most perfect confidence." "From your long and

* *Blackwood's Magazine*, April 1851.

"*Modern State Trials: Revised and Illustrated, with Essays and Notes.* By WILLIAM C. TOWNSEND, Esq., M.A., Q.C., Recorder of Macclesfield. In 2 vols. 8vo. Longman & Co. 1850."

intimate intercourse with Lord Stirling," he was asked by the prisoner's counsel, "what is your opinion of him, as a man of honour and a gentleman?" "I think my presence here to-day is the best answer to that question," answered the high-minded soldier. "Nothing on earth would induce me to stand where I do, before this court, if I did not believe Lord Stirling to be incapable of doing a dishonourable action." Evidence of this kind, when there exists a real and a serious doubt as to the prisoner's guilt, is of great value to both the accused, and the public, interested in the success of justice alone; but where the facts, and the intention which they evidence, are clear, such evidence is utterly worthless; nay, a good character may positively form an element of aggravation, since the possession of that character may facilitate the commission of crime, by disarming suspicion. It is for this reason that evidence of good character is, in trials, reserved for the close of the inquiry, during which *the facts* may have been elicited, which it will be for the jury to pronounce clear or doubtful.

Now, in the remarkable case before us, we have reversed this order of procedure, that the reader may enter upon a lengthened and deeply interesting inquiry, in a spirit of perfect fairness to the accused; who stands upon the presumption of his innocence as upon a rock, till dislodged by overpowering proof, which in the reader's unbiassed judgment, the counsel for the crown may have failed to adduce. Was the individual charged with this enormous offence INNOCENT or GUILTY? is the question now before the reader. He declared then that he was innocent; it is rumoured that he says so still, and protests that he is Earl of Stirling, and has means which he intends to use, in due course of law, of proving himself such. We, however, are concerned only with that which occurred in a public court of justice in this kingdom. If there was a miscarriage, we are not responsible for it; if he prove to have been erroneously

convicted, nothing can be more lamentable—no one entitled to deeper sympathy: if he were acquitted, though really guilty, then the reader might be disposed to concur in Mr Townsend's observation, that "the prisoner, in the height of his pretensions, and the ability with which they were supported, soared above all competitors, and has left a name unrivalled in imposture since the days of Perkin Warbeck."*

Put the case, prospectively and retrospectively, of a total stranger claiming a peerage, by means of what he knows to be a fictitious pedigree. First, *prospectively*—every link in the chain will have to be forged with mingled boldness and adroitness, for it will inevitably be tested rigorously. Truth must be so skilfully intermingled with falsehood, as to baffle practised acuteness: facts and declarations, written and oral, must be arranged, with reference especially to dates, with such a comprehensive caution as not to admit of conflict with any item of hostile and undoubted proof, though disclosed accidentally! A single frail link, and chain and anchor are gone! What consummate sagacity, what extensive knowledge, what unfaltering patience and resolution, are indispensable as conditions of success in this guilty enterprise! The astute schemer must calculate on having, after he has once started, a bloodhound on his track.—Having matured his plans, what a moment is that of going into action—of openly starting his case! With what tremulous anxiety does he contemplate each successive stage of development! How start, in dismay, at the possibility of some suddenly-discovered deficiency, inconsistency, contradiction, impossibility, or unlooked-for consequences of steps deemed to have been profoundly well considered!

And *retrospectively*—when the fictitious pedigree has been annihilated—with what feelings of mortification must the defeated schemer review his course of procedure, wondering at the shortsightedness which had failed to provide against this, that, or the other

* Vol. i. p. 407.

contingency—which, as it has turned out, could have been done so easily and safely!

“A curse upon my pate,
That this foul blot my stupid hoodwink'd eye
Perceived not.”*

For it is frequently found, by those versed in such inquiries, that the most consummate impostors prove to have been guilty of some one act, or omission, fatal to the best-concerted scheme—to have gone much too far beyond, or fallen far short of what was necessary. It may be called being wise after the event; but so it is, and is perhaps ordained to be: a truth consolatory to be borne in mind by those charged with the responsibility of conducting legal investigation, and vindicating public justice; stimulating them to the exhibition of patient vigilance.

How far the foregoing remarks may prove applicable, if at all, to the facts of the case now under consideration, we shall leave the reader to determine when he shall have been put in possession of them; for till then we intend to withhold the result of the trial—the verdict of the jury—which may, in some respects, not a little surprise him. The whole case appears to us pervaded by the very spirit of romance—exciting and sustaining curiosity and interest to the very last. We propose, first, to collect the facts which afforded the materials for investigation before the High Court of Justiciary; which, we take the opportunity of saying, appears to us to have performed its duties admirably. At present, we cheerfully bear our testimony to the discretion, urbanity, dignity, and vigilant sagacity, exhibited by the court, as well as the acuteness, learning and eloquence of the counsel on both sides. The present is probably one of the most remarkable trials occurring in the whole annals of Scottish jurisprudence. It will be our endeavour to extricate the facts of the case from the technicalities and complexities in which they were necessarily involved at the trial;—as we go on indicating several points

of interesting contrast between Scottish and English criminal procedure.

We regret being unable conscientiously to express our obligations to Mr Townsend, with respect to his account of “the trial of Alexander Alexander, claiming to be Earl of Stirling, for the crime of forgery.” He is indebted for his materials, without acknowledging it, to Mr Swinton, an advocate at the Scotch Bar, and now Professor of Civil Law in the University of Edinburgh, who, in 1839, published an elaborate and authentic account of the trial, in an octavo volume;† having the advantage of careful revision by the presiding judge, and the counsel, of those parts of the case more immediately concerning the part which they respectively bore in the proceedings. The evidence is also given at length, as well as several interesting documents tendered in proof, but rejected, yet throwing light on some of the most obscure parts of the case. The alleged forgeries were divided into three classes, and one of them, incomparably the most interesting (a map, with a great number of indorsements upon it), forms the subject of a large sheet of *fac-simile*. Mr Townsend, we are compelled to say, does not seem to have thoroughly mastered the case; the facts of which, as presented in the full report of the trial, undoubtedly demand some effort in order to present them at once accurately and popularly, so as to reward the attention bestowed on them by general readers and students in jurisprudence. His introductory observations, however, are interesting and pertinent. He points attention‡ to “the marked increase in all the crimes which *require superior intelligence*, rather than brute force, for their successful accomplishment, and which can be effected only by the misapplied union of talent and education;” and also “to the temptation afforded to persons of comparative refinement—

† *Report of the Trial of Alexander Humphreys or Alexander, claiming the title of Earl of Stirling, &c.* By ARCHIBALD SWINTON, Esq., Advocate, Edinburgh: Thomas Clark, Law Bookseller, 1839.

‡ Vol. i. p. 404.

* *The Pilgrim.*

of cool head and callous heart—by the abolition of the punishment of death for crimes against property, to adventure in forbidden ways of enriching themselves at the expense of their neighbours, where failure and detection would not involve their personal safety" [by which he means their lives]. He proceeds to give, briefly, three or four "modern instances," amongst which are the monstrous fabrication of a mural tablet, "with all the signs of antiquity and convenient dates," in the late celebrated "Tracy Peerage" case, and which created such a vivid display of indignation in the House of Lords; and another recent case, that of a minister of religion, "the Rev. William Bailey, Clerk, LL.D.," which is of such an astounding character, that we shall present its leading features to the reader previous to entering on that which is the subject of the present paper.

The Reverend Dr Bailey, minister of St Peter's, Queen Square, Westminster, was, till within the last few years preceding his trial, an attractive preacher, and highly respected by his congregation. Happening to see a paragraph in a newspaper announcing the recent death of an obscure miser named Smith, of enormous wealth, with no near relations, and so uneducated as to be scarcely able to write his name, the deadly idea occurred to him, suggested by that Evil One against whose temptations his life had been spent in warning others, of setting up a fictitious claim to a large sum of money, as due to his sister, from the deceased miser! He pitched, doubtless for greater probability's sake, upon the fractional sum of £2875; and in due time forwarded to the executors copies of two instruments, an "I O U," and a promissory note for that amount, purporting to have been signed by the miser, and given to "Miss Anne Bailey, of 45 Upper Arthur Street, Belfast, for value received from her, in cash advanced by her on loan to me. *Witness*—William Bailey, Clerk, LL.D., minister of St Peter's, Queen Square, Westminster." Not a little astonished by this

sudden application, their testator having died worth several hundred thousand pounds, and no trace existing among his papers of any transaction in which the name of Bailey occurred—none of his acquaintances having ever heard of the name of Bailey, as known to the testator—the executors resolved to resist the action, and put the plaintiff to sworn proof in a public court of justice. The reverend gentleman stepped boldly into the box; first produced an account-book, containing various entries of loans by his sister to Smith, the deceased miser; and then swore point-blank to his having witnessed the miser's signature to the "I O U," in the vestry-room of St Peter's! *just before divine service!* at seven o'clock on the evening of Thursday the 12th August! His evidence was totally disbelieved; his pretended vouchers were impounded; and he was committed on the charge of forgery. How shall we proceed with the frightful facts elicited at his trial for that offence? First of all, it was proved beyond all doubt that, at the precise period pitched upon by the miserable forger as that on which he had witnessed the signature of the miser, the latter had been in company for two hours with a friend, a builder in the Hampstead Road, whose reason for remembering the circumstance was, that it was his wedding-day! But scarcely half of this tale of horror has yet been told. Not contented with having committed perjury himself, he procured, and endeavoured to procure, others to perjure themselves, in order to support this dismal fable concerning Smith's signature! He had met in the Brompton Road a poor Irishman who sold fruit by the roadside, and asked him if he would become a witness at the trial of an action! "I looked at him," said the man, "and *admired* what he meant, but I said 'Yes,' to see what his motive was." The reverend delinquent then gave him a shilling, and told him to call at his house the next day; and on his doing so, gave him a written paper, which he was to commit to memory—the purport being, that

he had seen Smith go into the vestry of St Peter's, and come out again in five minutes, followed by Dr Bailey in his surplice, on the evening of the 12th August! The man preserved, and exhibited in court at the trial of Dr Bailey, this blighting evidence of guilt! The witness had been taken to the Exchequer Office, and there had signed his false depositions; but when sent down to swear publicly in court to the falsehood, "his flesh," he said, "crawled on his bones, and he ran away!" Yet again—the prisoner had given £30 to a reduced tradesman to swear to the same falsehood, and he did so swear, as he confessed!—the Doctor having told him that, "unless he did, the Doctor's sister was in danger of being robbed of £3000!" Dr Bailey's written instructions to both witnesses were produced in court, and proved, on his trial! Nor have we even yet reached the depth to which this abandoned of God descended in the abyss of guilt. He called several unfortunate women—discharged servants, milliners, and others—whom he had tutored to swear to different portions of the imaginary transaction between himself and Smith! But the prosecution, aided by secret memoranda which they had discovered in Dr Bailey's desk, easily rent asunder this black tissue of perjury. Finally, as though to add an infernal glare to these atrocities, Dr Bailey succeeded in producing several witnesses, of unquestionable respectability, who conscientiously deposed to his eminence as a preacher, and the estimation in which he was held as a man of moral worth! All, however, was in vain: he was found guilty, and transported for life. "How venial," justly observes Mr Townsend, "in comparison with his double guilt, yet how sad in contrast, the sin and punishment of Dr Dodd!" We conceive that few cases blacker than this are on record in the annals of crime. It were vain to speculate on the state of mind and of feeling of an accepted and successful minister of religion, who could conceive, and proceed deliberately to carry into execu-

tion, as he did, the idea of such enormous atrocity!

It is time, however, to come to the remarkable case of the claimant of the Stirling peerage. The trial occurred twelve years ago,* at Edinburgh, before a Scottish jury consisting of *fifteen*, instead of twelve, as in England and Ireland—the decision of a majority being sufficient to determine the result. There were four judges, constituting the High Court of Justiciary—Lord Meadowbank, Lord Mackenzie, Lord Moncrieff, and Lord Cockburn. The case of the crown was conducted partially by Mr Rutherford, then the Lord-Advocate, but principally by the then Solicitor-General, Mr Cosmo Innes, and Mr Handyside; that of the prisoner, called in Scotland "the *panel*," by Mr Robertson, Mr Anderson, and Mr Inglis.† The court was crowded to excess throughout the whole trial, which lasted an entire week, attracting great attention, not only in this country, but at Paris, which supplied witnesses eminent as antiquaries and otherwise. The appearance of the prisoner at the bar was attended, as we have seen, by a singular and touching manifestation of chivalrous devotion to his interests, and enthusiastic confidence in his integrity and honour, on the part of Colonel Charles D'Aguilar. This gentleman not only took his seat, in the first instance, beside the prisoner, but remained there till the last moment of the trial, when the prisoner was carried out of court in a swoon, on hearing the verdict announced.

Evidence of the prisoner's character, similar to that borne by the Colonel, was given by another gentleman of unquestionable honour and position, in society, Mr Hardinge, of Bole Hall,

* In 1839.

† During the fifteen years which have [A. D. 1854] elapsed, the following changes have occurred among the judges and counsel engaged in this trial. Three of the four judges are dead, and one (Lord Meadowbank) has retired into private life. Of the counsel, the then Solicitor-General (Ivory), Mr Robertson, Mr Handyside, Mr Rutherford, and Mr Anderson have become judges, and the latter two are dead. Mr Innes is still at the Bar, and Mr Inglis is Dean of Faculty.

near Tamworth, a relative of the late Sir Robert Peel.

"Q.—You know the prisoner intimately?"

"A.—I have constantly corresponded with him, and know him—so far as one man can know another.

"Q.—What is your opinion of him as a man of moral principle and honour?"

"A.—If I were to point out a man as remarkable for the strictest honour, I would name Lord Stirling. When at school, he was universally beloved by every individual. * * * I introduced him to Sir Robert Peel. In his letters to me I never saw an expression that was not honourable to his head and heart. There is no man in existence more honourable, in my opinion, than he: as to that, from the knowledge I have of him, I think myself entitled to speak with confidence." *

Of such evidence as this, the prisoner's counsel, as it may be imagined, did not fail to make the most; but the Solicitor-General assailed it thus:—

"It cannot avail the prisoner *here*. Evidence to character may avail the accused where the case hangs *in dubio*, but not where the evidence is clear against the party. The circumstances in which the prisoner was placed, and the very end at which he was aiming, must have made it part of his game to preserve and keep up the good character which he seems originally to have possessed. He was aiming to obtain high honours and extensive lands and estates, and it was necessary for his success that he should conduct himself as a gentleman. I have no doubt that, being a very clever man, he could so conduct himself as to preserve the good impression which had from the first been laid in the early attachment of unsuspecting and affectionate boyhood. But all this must yield, if there be real evidence of crime." †

To this, which, however just and forcible, would be considered, at the English Bar, as *perhaps* pressing somewhat severely upon a prisoner so situated, his counsel answered by urging on the jury the unreasonableness of

imputing such foul crime to "a man of unsullied character—or rather, as my learned friend seems to say, having got up a false good character for villanous purposes, like the man who was said to have fraudulently concealed his own insanity." ‡

The presiding Judge thus dealt with the topic:—

"Gentlemen, I believe every tittle of this evidence, given with an earnestness which, if it told on your minds as it did on mine, must have been by you felt as most deeply affecting. It is, however, at best, but evidence as to the *character* of the prisoner; and if the case be not *clear* against him, he will be entitled to the benefit of that character. But even if he had not obtained it, if the case had so stood, he would equally have been entitled to the benefit of the doubt. Still, you have got that evidence to character, and, still more, on account of it will you be disposed to listen to the suggestions of your own minds, and if the grounds for convicting the prisoner be not entirely satisfactory, in that case acquit him of these charges by a verdict, providing either that he is not guilty, or that, however suspicions may attach to him, the guilt has not been legally proven." §

It will be not a little interesting, in the event, to see to what extent the jury acted upon this temperate and sound judicial advice. We now entreat the reader to peruse the ensuing narrative with a suspended judgment, keeping his eye steadily fixed on the true points of inquiry. It was *not* one of them, whether the prisoner's claims to the Earldom of Stirling were valid or not, but simply and exclusively whether certain documents were, in fact, forgeries; and if so, whether the prisoner had either forged them, or uttered them with a guilty knowledge that they were forgeries. It is of the utmost moment to distinguish between these two questions, for every one of the documents may have been forged, and even designed by the forger, and intrinsically calculated, to advance the interests of the claims and pretensions

* SWINTON'S *Rep.*, 189, 190. † *Ibid.* 268.

‡ *Ibid.* 273.

§ *Ibid.* 334.

imputed to the prisoner; and, further, the latter may have even availed himself of those forged documents for that purpose, and yet been as ignorant of the fact of forgery, and in all respects as innocent of a guilty uttering, as any of the judges before whom he was being tried. Thus there are three questions before us: I. Were the documents in question, or any of them, forged? II. If so, were they forged by the prisoner, or by others with his knowledge? III. Or, lastly, did he utter any of them, knowing them to be forged?

ALEXANDER HUMPHREYS, the prisoner, was the son of respectable parents, and born in Warwickshire. His mother's name was Hannah, and she was the youngest child of the Rev. JOHN ALEXANDER, a Presbyterian minister at Dublin. His father was a merchant of considerable affluence, and living in suitable style, and very hospitably, at a place near Birmingham called "Digleth," from which, in 1798-1799, he removed to a place in the same neighbourhood called Fairhill, but subsequently "The Larches." "Nobody in Birmingham," said Mr Hardinge, "lived better. They kept their carriage and a pair of fine grey horses, and had half-a-dozen servants at least."* Their son Alexander was born about the year 1784, and he went to a school near Birmingham kept by the Rev. Mr Corrie, the brother of an important witness in the case. Young Humphreys was a great favourite among his companions, two of whom were, as has been seen, Colonel D'Aguilar and Mr Hardinge. In his eighteenth year, he accompanied his father on some errand of business, as it is supposed, to France, during the short peace of 1802, both of them being, unfortunately, among the English detained prisoners by Napoleon. The father died in 1807, at Verdun, where his son remained till the peace of 1814. Two years previously to that event he married Fortunata Bartoletti, a Neapolitan lady, by whom he was introduced to a personage, one Mademoiselle le Normand, who was destined to figure prominent-

ly in his after history. She was an authoress of some little repute, but better known as the Parisian *Sybil*—in plain English, she was a fortune-teller by means of cards, *Tireur des cartes*;† and she told Mr Humphreys his fortune, he paying her five napoleons—viz., "that he would encounter many toils and distresses, but at length arrive at great honours." How he supported himself in France is unknown; but, in 1814, he and Mrs Humphreys came over to England, and settled at Worcester with very limited means. He became an usher at a respectable school, then called Netherton House, but shortly afterwards was the master of the establishment. It would seem, also, that he carried on, to a little extent, about the same time, the somewhat incongruous business of a wine merchant, and, in fact, appeared to be in straitened circumstances.

How it came to pass seems a mystery; but about a year after his inauspicious settlement at Worcester, viz., in 1815 and 1816, he conceived the bold idea of claiming the old Scottish Earldom of Stirling, together with estates in Scotland, and vast possessions in British North America, alleged to be annexed to the title. The dazzling link of assumed connection with these aristocratic pretensions, was his mother. She and her husband seem to have gone down to their graves, however,—he in France in 1807, and she in England in 1814,—without ever having even hinted the existence of any such claims as their son was now starting within a little more than a year after his mother's death; unless, indeed, reliance is to be placed upon the extraordinary statements made some eleven or twelve years afterwards by Mr Humphreys' sister, a lady at Manchester, named Eliza, but commonly called Lady Eliza Pountney, who deposed that she had often heard her mother say to her children that "they had noble blood in their veins," and had heard her deceased father "frequently call her mother his countess;" but that her mother, "being a person

* SWINTON, p. 189.

† Ibid. p. 155.

of great humility, and perfectly unostentatious, did not take upon herself the title;" that her mother had repeatedly said that she had heard *her* mother say that she had an emblazoned pedigree of the Earls of Stirling, setting forth their marriages, issue, and descent, but which had been surreptitiously taken away or stolen from her; together with divers other family papers and valuable documents respecting the title and descent of the Earl of Stirling to her family; and she had also heard her mother say that she had two brothers, *John* and *Benjamin*, who had fully intended assuming their peerage honours, had not early death cut them off in the prime of life; also that they died unmarried, as did her eldest sister, *Mary*; whereby she (the mother of the deponent) said she believed herself to be the last of her family of the Alexanders, who were entitled to be Earls of Stirling: all which particulars the deponent considered "were matters of notoriety in the then circle of her mother's friends; but she did not know of any of their friends who were then alive."* The value, however, which was set upon these reminiscences, by those most affected by them, may be inferred from the fact, that this lady was not, though she might have been, called as a witness on behalf of her brother at the trial, and though the prisoner's counsel were challenged by the Crown to produce her,† and the deposition containing these critical statements was printed with the "Additional Defences" given in by the prisoner. It is for the reader to judge of the probability that such a state of facts really existed: that Mr and Mrs Alexander could have entertained the idea, and freely spoken of such critical family matters, without any disinterested respectable person being producible to attest the fact of their having done so, and of their having taken a single step to investigate their supposed rights, or prosecute their imposing claims. The reader's attention, however, is called to the fact of this lady having made

* SWINTON, Appendix, p. 88.

† Ibid. 179.

these statements *so early as January 1826*, and of her brother, the prisoner, then availing himself of them. The nature of some of these representations may hereafter throw light upon dark and intricate passages in this remarkable history; but it must be remembered that this lady's statements were not brought before the jury.

The first evidence of the prisoner's stirring in the matter of his claims to the peerage, consisted of a statement made at the trial by a Mr Corrie, a solicitor at Birmingham, who had acted in that capacity to the prisoner's father, and been a trustee under his will. He said that he first heard from the prisoner himself, of his claims, in 1815 or 1816; but that on his saying "he had *no documents*, or no *effectual documents*, to support them," Mr Corrie had "declined to act for him then."‡ Some time afterwards, however, he met with persons exhibiting greater zeal and enterprise on his behalf; but they do not come on the stage till after an interval of nearly seven or eight years—by which time he would seem to have entered into confidential relations with more than one professional adviser—among whom was a Mr Thomas Christopher Banks, the author of a work on dormant and extinct peerages,§ and who will presently appear on the scene frequently and to act pretty decisively. Acting under this gentleman's advice, early in the year 1824, Mr Humphrey's applied for and obtained a royal licence to assume his mother's maiden name of Alexander—also that of the Stirling family—but without any intimation, to the authorities, of any particular reason which he had for doing so.|| Thenceforward, he wrote

‡ SWINTON, p. 183. § 1 TOWNSEND, 409.

|| It is a commonly received notion that a person cannot change his *surname* without a royal licence; but this is altogether erroneous. Any person may change, or add to, or sink his surname, at his will, "and work his way in the world with his new name as he best can," said the late Chief-Justice Tindal, in the case of *Davies v. Lowndes* (1 *Bingham's New Cases*, 618), "provided it be not for the purpose of fraud." The royal licence serves only to authenticate and facilitate the evidence of such change.

himself "Alexander Humphreys Alexander." Acting on the advice of counsel, and his legal agents, he ventured next to take up the peerage title of the noble family of which he aspired to be the representative; and on the 2d June 1825, actually attended at the election of a Scottish representative peer in the room of the recently deceased Lord Balcarras; answered to the name of *The Earl of Stirling*; and having tendered his vote, it was necessarily recorded by the official clerks! This feat he long afterwards justly characterised as "a serious blunder;" adding, that "it was beginning where he should have ended."* He founded his claim, be it observed, on this occasion—as, indeed, ever after—upon "a royal charter, or letters patent of Novodamus, under the Great Seal of Scotland, dated the 7th December 1639, granted by King Charles I. in favour of William, Earl of Stirling." This alleged charter is the chief corner-stone of the entire structure, whether of fact or of fiction, with which we have to deal. It is necessary now, however, briefly but clearly to set before the reader the time and manner of the original ennobling of the Stirling family.

Sir William Alexander, a courtier, and at the time Secretary of State of James I., obtained from him in A.D. 1621 a charter granting to him the territory of Nova Scotia; and seven years afterwards, viz., on the 2d February 1628, he received from Charles I. a grant of the province since called Canada. Two years subsequently, viz., on the 4th September 1630, he was raised to the peerage by the title of Viscount of Stirling, by patent to him and "his *heirs-male*;" and finally, three years afterwards, viz., on the 14th June 1633, on occasion of the latter king's coronation, he was advanced to the dignity of Earl of Stir-

ling and Viscount Canada, by patent to him and, again be it noted, "his *heirs-male*." He took possession of all the vast territory which had been granted to him; and his son spent some time in America, regulating the affairs of the colony. The first earl died in London in February 1640; and with his death, suffice it shortly to state, terminated the connection of the Stirling family with Nova Scotia and Canada. It is not altogether needless to advert to the various changes of ownership between England and France which those provinces underwent, down to the Treaty of Utrecht in 1713.

The first Earl of Stirling had nine children—i. e., seven sons and two daughters. He had four successors in his earldom, the last of whom, Henry, the fifth earl, died without issue on the 4th December 1739. The link in the chain of descent with which we are specially concerned is that of JOHN, the fourth son of the first earl: since the prisoner's case was, that he was descended from *this son John*. The prisoner appears to have been the second claimant of the peerage. The first was a *William Alexander*, surveyor-general of the State of New Jersey, and afterwards a general in the American army. In 1759–60 this gentleman, whose name, position, and claim must be borne in mind, assumed the title, and presented to the sovereign, for the recognition of his honours, a petition, which was remitted to the House of Lords. Two years afterwards, however, on the 10th March 1762, a Committee of Privileges resolved that he had not established his claim, and that in the mean time he, or any person claiming under him, should not be admitted to vote at the elections of peers of Scotland, and that he "be ordered not to presume to take upon himself the said title, honour, and dignity, until his claim shall have been allowed in due course of law."† There the matter ended; and the dormant title of Stirling had rest for fifty-three years, viz., till the year 1815, when the prisoner

* This statement is taken from a book published by the prisoner in 1836, entitled, "Narrative of the Oppressive Law Proceedings, and other Measures resorted to by the British Government, and numerous private individuals, to overpower the Earl of Stirling, and subvert his lawful rights. Written by himself."

† *Journal of the House of Lords*, xxx. 186.

so suddenly revived it in order to claim it as his own.

When we parted with him, viz., on the 2d June 1825, he was claiming to vote in the election of a representative peer of Scotland. We next find him instituting legal proceedings in Scotland, on the 7th February 1826, for procuring himself to be declared heir to *his mother*: on which occasion he styled himself "Alexander Humphreys Alexander, Earl of Stirling." On this occasion two documents were produced,* of great importance, and of which more will be presently said: viz., an affidavit alleged to have been made by a Henry Alexander, 16th July 1723, and "a statement" by a William Gordon, dated the 14th January 1723; both attested by a Thomas Conyers, on the 10th and 20th July in the same year;—the whole tending to establish the fact of the then existing charter of *Novodamus*, on which the prisoner's claim was founded, and also some links in his pedigree. This preliminary step having been taken, he appears to have returned to Worcester, and there carried on an extensive correspondence, having for its objects the discovery of evidence in support of his claims, and raising loans on the security of his alleged rightful possessions in America and Scotland. Mr Banks was despatched to North America to publish and assert the prisoner's rights as Earl of Stirling, and also to search for evidence; and he soon sent home flourishing accounts of the success of his mission. "By all," says the prisoner in a letter to a friend at Glasgow,† "he was received in a most flattering manner. The British consul had tendered him his services in a very handsome manner by letter. It is now confidently anticipated the Congress will grant me a location of *five millions of acres* (which is found to be *not one-twentieth part* of the lands originally granted—all convertible at once, at common market price, into

cash!) and will be more than one million sterling." Eight months afterwards (25th July 1827) he exultingly announced fresh feats on the part of his successful agent and pioneer, Mr Banks:—"I make haste to inform you that the charter of Nova Scotia is upon the record of the Great Seal at Edinburgh. Mr Banks has in his possession, and is using at this time, with complete effect, in America, all the office copies of that and the other charters which the first Earl of Stirling obtained." "By degrees all the valuable papers of *which my grandmother was robbed* about the time that the general" (the William Alexander already referred to) "preferred his claims to the earldom, are finding their way back to me. I have had the great satisfaction of learning, by these letters, that Mr Banks has positively ascertained the existence of another copy of that document." On returning from America, in the spring of 1828, Mr Banks was despatched on a similar errand to Ireland; and in one of his earliest letters to the prisoner, dated the 2d May 1828, he alludes to a communication made to him by the latter concerning some "late *Parisian* information," adding, "and I believe that all the latent windings are about to be brought to light. Your extracts are most encouraging; and indeed it is more than extraordinary that so much truth has been mentioned, where the circumstances of past events were never told. Thus, what is to come may be most fairly looked up to as a surety of the wonderful works of Providence in the way of retribution, which, though slow in occurring, is nevertheless true in taking place at the due time, but which human endurance, in the interim, can barely be brought to have the patience to await, or sustaining severe trials with fortitude."‡

Mr Banks was despatched a second time to Ireland in the spring of the ensuing year, and in a letter to the prisoner, dated Carlow, 17th March 1829, not put in evidence, announced a great and gratifying event—neither

* SWINTON, p. 105.

† Ibid. p. ix. note.—Letter dated 24th November 1826. (The letters appearing here are among those seized at the prisoner's house, and deposited at the Justiciary Office.)

‡ SWINTON, p. xciv.

more nor less than his discovery of an old document purporting to be a duly attested "EXCERPT" from the lost charter of Charles I., on which the prisoner had based his claims to the Stirling peerage! This "excerpt" was the instrument which proved to be the *first* article of indictment against the prisoner. Mr Banks gives, in the last cited letter, the following account of this truly wonderful instrument. He found it in a parcel, which had been left at his hotel in Dublin, by some stranger, "a person with whom he had had no communications." But discovering an all-important indorsement upon it, verifying the authenticity of the document, and signed "*Thomas Conyers*, 10th July 1723," he returned to Carlow, which he had visited on the preceding occasion, and found out a Mrs Fairclough, who had some knowledge of the family of Conyers; and Mr Banks was at length led to believe, that this mysterious parcel had come from her husband, who had gone from Carlow, and whom he represented to be a disreputable person. "Fairclough most probably sent the parcel to me without any communication, that his name might not be brought forward, and he be thereby exposed to questions or investigations as to the Conyers' concerns, which he might not choose to answer. Such are my surmises. However, the 'excerpt' is certainly of great importance, as the identity of its having once belonged to Mr Conyers, who had the original charter of *Novodamus*," [the indorsement stated, that "*the original charter* was at present in his keeping"] "is so well proven and established." He had come to this conclusion, from an alleged interview with the Inspector of Franks at the General Post-Office, Carlow, to whom he showed the indorsement, and who compared the signature with the undoubted signature of Conyers, particularly that affixed to his will. "I think," added Mr Banks, "I have been very fortunate." His discovery, however, did but realise an anticipation which he had formed, and conveyed to his employer a year

before, during his former visit to Ireland, viz., on the 23d April 1828: "I am in great hopes to trace Conyers' family; which if I do, and find his representatives, his papers might mention when, and to whom he gave the charter; and, not improbably, even a copy might be found amongst them."* A month afterwards, Mr Banks wrote two letters to Mr Lockhart, a Writer to the Signet at Edinburgh, who had been professionally engaged by the prisoner in the preceding April, which the prisoner's counsel vainly endeavoured to get admitted in evidence, without calling Mr Banks, though he was alive and within reach, and the counsel for the crown challenged the prisoner's counsel to call him. This, however, was declined, on the alleged ground that, in 1834-5, the intercourse and friendship between the prisoner and Mr Banks had been terminated through a quarrel.† The first of these two letters, dated the 10th April 1829, contained the following passages:‡ "I must observe that, during my stay in Ireland, I was very fortunate in some points of high consequence, all particularly confirmatory, as well of his lordship's descent, as of the identity of the charter of *Novodamus*; an original excerpt from which I have had put into my hands, of a most undoubted nature and authenticity. * * * I consider what I have so unexpectedly met with to be of very estimable service, as I should think it could amply prove the tenor of the original charter." The second letter, of the 17th April 1829, contained the following:—"As to the excerpt I so unexpectedly got in Ireland, it appears to have been either taken by, or to have belonged to, Mr Conyers, who had the original charter, for *his initials are on the back of it*; and these initials I have had examined with his original writing to several documents in the several courts at Dublin. Having made a copy of this excerpt, I also send it for your perusal, that you may judge how far it may be adequate to maintain the application for a new

* SWINOTON, Additional Appendix, p. xcii.

† Ibid. pp. 106, 110, 178. § Ibid. p. cvi.

charter before the Lord Advocate, or to sustain an action *to prove the tenor* in the Court of Session at Edinburgh.*

Within a month's time, viz., in the ensuing May, this memorable "excerpt" was in the hands of Mr Lockhart; who, on the 12th of the ensuing October, commenced an action at Edinburgh, for the purpose of "*proving the tenor*," as it is called, of the original though lost charter, of which this alleged excerpt had been discovered. The action was opposed by the crown lawyers; and as the prisoner had nothing but this "excerpt" to rely upon, adducing no evidence of his propinquity to the grantee of the charter, the suit was dismissed for want of title, on the 4th March 1830. A second similar attempt followed the same fate on the 2d March 1833; and these two were the only efforts made by the prisoner to use this capital instrument of evidence, the "excerpt," for the purpose of proving his rights of succession to both the honours and estates of the Stirling family. All this while, however, he was strenuously endeavouring also to establish his *pedigree*; for which purpose he availed himself of certain methods of legal procedure in Scotland, appearing to us so absurd in their nature, and dangerous in the facilities afforded by them for fraud, as to have become, says Mr Swinton, "for some time a subject of very general complaint in Scotland."† Any claimant of a right of succession there, has, it seems, only to obtain, as a matter of course, a precept to the sheriff to summon an inquest to try the alleged right; and if there be no opponent claiming precisely in the same character, nothing can be heard against the claimant! Evidence of any description is admitted; and the inquest finds, upon oath, that the claimant is entitled to the character which he seeks to establish! And beyond all this, if their proceedings should continue unchallenged for twenty years, said the Solicitor-General,‡ it would not have been possible to set

aside or annul them! Surely "the amending hand," which Lord Coke prays may be "blessed," is here required in Scotland! By means of this precious process, the prisoner procured himself, on the 11th October 1830, to be declared nearest lawful heir, as GREAT-GREAT-GREAT-GRANDSON of William first Earl of Stirling. On this occasion he produced, among his documentary evidence, a copy of the affidavit of Henry Hovenden, already referred to, and also of another by a *Sara Lyners*, dated the 17th January 1722, of which more anon. Within a few months' time, again, he was, on the 2d July 1831, declared heir in the Nova Scotian and Canadian possessions of the first Earl!—a fact which, a few days afterwards, namely, on the 12th July ensuing, he formally communicated to the public authorities there, and inhabitants, by way of proclamation,‡ in terms almost befitting a sovereign newly restored to his dominions. While thus intrepidly urging on his way in the law courts of Scotland, he seized every opportunity of personally exercising the rights of the peerage. On the second September 1830, he voted, under protest made by the Earl of Rosebery, but not seconded, at the election of representative peers at Holyrood; again, on the 3d June 1831, but under a protest formally entered by the Duke of Buccleuch and Lord Lauderdale.¶ On the 29th August 1831, he petitioned for leave to do homage at the coronation, as here-

§ SWINTON, 2d Appendix, p. lxxxiii.

¶ On the 25th June 1847, was passed an Act (10 and 11 Vict. c. 52) entitled, "An Act for the correction of certain abuses which have frequently prevailed at the election of Representative Peers for Scotland," which recited that divers of the peerages of Scotland have from time to time become dormant or extinct, and frequent abuses have prevailed by persons assuming such peerages, and voting in respect thereof at such elections, to which peerages such persons had no right. It proceeds to enact that no title standing in the authentic list of the Scottish Peerage, entered in the Roll of Peers by order of the House of Lords on the 12th February 1708, in right of which title no vote has been given since the year 1800, shall be called over at an election, without an order of the House of Lords.

* SWINTON, Preface, p. xii.

† Ibid. xiv. 13.

‡ Ibid. 195.

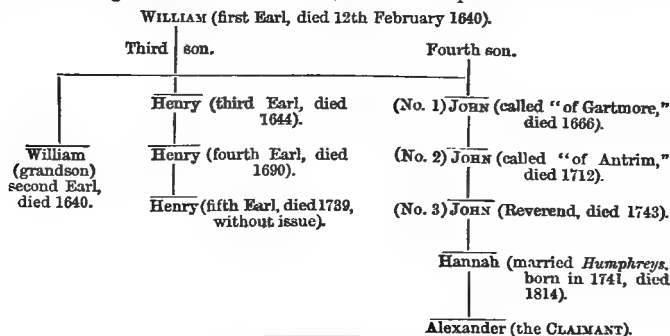
ditary lieutenant of Nova Scotia; created several baronets in right of such lieutenantancy, one of whom was his agent Mr Banks, to whom he also assigned 16,000 acres of land in Nova Scotia, but who resigned the rank after his quarrel with the prisoner in 1834-5; and finally, on the 25th January 1838, forwarded to Lord Melbourne a solemn protest, as hereditary lieutenant of her Majesty in the provinces of Nova Scotia, including New Brunswick, and Upper and Lower Canada, against the appointment of the late Earl of Durham as Governor-General of the colony. That this was at all events a bold and decisive line of operations, apparently indicating supreme confidence in the validity of his pretensions, no one will doubt; and it renders deeply interesting the inquiry on which we are about to enter.

In the mean time, however, a question may occur,—Whence could be derived the funds requisite for carrying on these expensive, extensive, and complicated operations, in different and distant parts of the world? In the year 1829, the prisoner appears to have quitted Worcester, in distress, and come to London, where he established himself in lodgings at the corner of Jermyn Street and Regent Street. While there, again, as was reluctantly testified by a witness at the trial,* he was “in great distress for money, unable to pay for his lodgings; and he acknowledged that he had left his

butcher’s bill at Worcester unpaid, and that his family were in great distress there.” Such, however, were the results of his confident and enterprising energy, such the reliance placed on his representations of success, in enforcing his claims in America, and the *éclat* which he derived from frequently and publicly asserting and exercising the rights of the peerage,—that in about eighteen months’ time he appears to have succeeded in raising from one agent alone, on the faith of his prospects, no less a sum, though at enormous rates of interest, than £13,000. He now brought up his family to town, established them in fashionable quarters, and lived expensively; and also opened an office in Parliament Street, whence he issued advertisements for the sale of territories in Canada, and debentures on his American possessions!

Let us now, however, inspect the machinery by which he originally proposed and attempted to raise himself from obscurity to distinction, from extreme poverty to vast wealth, to ally himself to aristocracy, and indeed become one of its prominent members.

The proposition which he undertook to prove, as has been seen, was, that he was the great-great-grandson of the first Earl of Stirling. We shall now place before our readers so much only of the various pedigrees as is necessary to trace, and render interesting to follow, the operations attributed to the prisoner:—



* SWINTON, Second Appendix, p. 165.

Here, it will be observed, we have three *Henrys*, in immediate succession, Earls of Stirling, and three *Johns*; which *Henrys* and *Johns* were respectively and successively brothers, first cousins, and second cousins; and one naturally asks, Why did not John (No. 3), the claimant's grandfather, at once take up the earldom, on the death, without issue, of his second cousin, Henry the fifth earl, whom he survived four years? A second observation arising on the above pedigree is, that the claimant derives title through a female descent—*Hannah*, his mother, claiming to do so by means of the irrecoverable but sweeping charter of *Novodamus*. The reader will bear in mind that there are, as we have already seen,* two patents of nobility to the Stirling family, respectively dated the 4th September 1630, and the 14th June 1633, giving the titles, first of Viscount, then of Earl, "to him and HIS HEIRS-MALE for ever, bearing the name and arms of Alexander." To establish his right under these patents, the prisoner must of course have proved that he was heir-male of the first Earl of Stirling. That would have been a matter of mere pedigree—showing himself the last of an unbroken succession of males. But the prisoner set up a case of a totally different nature; and it was this:—that the first earl "being," to quote from a "statement of William Gordon," hereafter referred to, "under great dejection of spirit, after losing three of his sons, who had given him the brightest hopes; and fearing, from the declining state of health of two of y^e survivors, that his honours might at no distant period pass to a collateral branch of his family, RESIGNED his titles and estates into the king's hands; who, by a charter under the great seal, bearing date the 7th Dec. 1639, (*i. e.*, two months only before the earl's death), conferred them DE NOVO [*de novo dedit*] upon him and the heirs-male of his body: which failing, [the whole case hinges on this clause] to y^e ELDEST HEIRS-FEMALE WITHOUT DIVISION OF THE LAST OF SUCH HEIRS-MALE hereafter succeed-

ing to the titles, honours, and dignities aforesaid, and to the HEIRS-MALE to be procreated of the bodys of such heirs-female."† "Note"—continued Mr Gordon—"I have not met with this charter in our publick records; but from a marginal reference to y^e 57 volume of y^e Reg^r. of the G^d. Seal, w^h. I noticed while I was taking y^e foregoing clause of limitation from *Mr James Hay's* transcript, I am led to conclude that y^e charter was entered in a part of that vol. where several leaves are now awanting. Be my conjecture true or false, little importeth, however, since the original charter is at this time [14th January 1723] in y^e possession of *Thos. Conyers, Esq.* of Catherclaigh, in y^e kingdom of Ireland, who will no doubt let you have inspection thereof, and, for aught we know, may further be willing to give it up to you, as it can be of no use to him." On the back of this document, in the alleged handwriting of "*the Reverend John Alexander*," was found "No. 3, from Mr W. Gordon, Edinb. 14th Jan^y. 1723. Rec^d. 27th." And at the foot of the "Statement" is the following "Attestation:"—"I have compared the limitations copyed on the other side in English by Mr William Gordon, with those cont^d. in the original charter of the 7th Dec. 1639, at present in my keeping; and for Mr Alexander's satisfaction, I do hereby certifie that the said Wm. Gordon has given a true and faithful translation of the clause by which the estates and titles of Lord Stirling are limited in the aforesaid charter, and descend to the heirs therein mentioned. Witness my hand, this 10th day of July 1723. Thomas Conyers." Thus the prisoner's case was, to prove the existence of this all-important charter of "*Novodamus*," as it was called, operating so great a change in the destination of the honours of the Stirling family; and then that he, by his descent, satisfied its conditions. But this original charter itself, he declared from the first, was not forthcoming; and not only was it lost or destroyed, but also the official record of it in the

* *Ante*, p. 334.

† SWINTON, Additional App. lxxxix., xc.

Register of the Great Seal; and his reliance was placed on the next best procurable evidence of its existence, afforded (after proof of the loss or the destruction of the original) by authentic quotations from its essential provisions, by the persons who had made such quotations from the original; but above all by the famous EXCERPT of the charter, so fortunately discovered in Ireland by Mr Banks. What cogent evidence, however, was requisite to establish such critical facts! and what courageous confidence must he have had in the merits of his case, who undertook to dare the lynx-eyed scrutiny to which his "proofs" would be inevitably exposed!

Divested of all technicalities and superfluous statements, the following is the first public formal account of the matter given by the prisoner, in the former of the two actions already alluded to, brought by him in 1829, to establish or "prove the tenor" of the original charter. His prayer was, "That it might be declared and decreed that the charter was in form following, [setting it out in the original Latin—and pretty Latin it is—according to the excerpt,] and that such 'decree' should be in all respects as valid and effectual a document to the pursuer (the prisoner) in all cases, causes, and questions whatsoever, as the original charter of *Novodamus*, if extant and found, would be, notwithstanding the same has been lost and is amissing, and cannot now be discovered."*

After setting out at length the various original and undoubted patents of nobility and charters to the first Earl of Stirling, the "summons" proceeded to recite his resignation, for the purpose of a re-grant, of his titles and honours, and the new charter of *Novodamus*, accordingly, of the 7th December 1639, with the new limitations. These stated the successive descents of the title to the fifth earl, who died without issue; after which, substantially the following curious narrative was given, and which is well worthy of attentive consideration, as affording a key to

much of what follows. The Reverend John Alexander, the grandfather of the prisoner, (John No. 3), being at this time *heir-presumptive* to the earldom, proceeded, in the year 1722, to collect the evidence of his right of succession. This, it will be observed, was after his second cousin, the last earl, had enjoyed the peerage and estates for thirty-two years—doubtless without having alive, at that time, any issue to succeed him; which is obviously intended to account for the *heir-presumptive* being then on the look-out after his own rights. One should have thought, reverting to the state of the pedigree already given, that all was simple and straightforward enough, as in an ordinary case of succession to a peerage. But the reverend grandfather of the prisoner is represented to have taken some peculiar steps in 1722. He employed an Edinburgh *expert* in genealogy, the Mr William Gordon of whom we have already heard, to "collect the evidence of the rights of succession, and draw out a statement of the descent." Mr Gordon set about his task; and early in 1723 transmitted to his employer a translation of the limitations in the charter of *Novodamus*, of the 9th December 1639, but made from only a copy of it; stating that the original was in the hands of a Mr THOMAS CONYERS, Master Extraordinary in Chancery in Ireland. On this the *heir-presumptive* employed an Irish professional man, skilled in such matters, a Mr Hovenden, to make further inquiry in Ireland. He went, accordingly, to this Mr Thomas Conyers on the 10th July 1723, *who allowed him to see the original charter*, which he "most minutely examined," and found to agree with the account of it which had been supplied to him by Mr Gordon. The *heir-presumptive* (John No. 3) afterwards succeeded in getting possession of this same original charter, which, on his death in 1743, came into the hands of his widow, who shortly afterwards went to England, and settled at Birmingham. About the year 1758, however, (that is, nineteen years after the death of the fifth earl, and fifteen years after

* SWINTON, Appendix, pp. vii., viii.

the death of her husband), the Reverend John Alexander, according to the prisoner's case, must have been for four years *de jure* the sixth earl, and died such! This invaluable charter, the foundation of the family honours, having been carefully and secretly kept by the *de jure* countess, was feloniously stolen from her by one of her servants, who had been bribed to do so by the William Alexander of America, who was then laying claim to the title.* This gentleman having thus obtained possession of it, entered into an agreement of partition of the family estates with two nephews of the fifth earl living in England, obtained the charter from their hands, and thereupon assumed the title, and, after a time, either suppressed or destroyed the charter! The claimant (the prisoner) had publicly advertised and offered a reward for the discovery of the missing charter, but in vain; and, as a forlorn hope, caused inquiries to be made in America, among the persons into whose hands the papers, &c., of the aforesaid Mr William Alexander had come in the year 1806. These persons swore (in America) that all his papers had been "sent to auction *en masse*," prior to the year 1812, and that "among them were a number of large parchments," and that, though diligent search had had been made for them, none could then be found or heard of. The claimant next averred that the original charter had been duly registered in the Register of the Great Seal, at Edinburgh, but that the record of it "had perished or disappeared" in consequence of the loss—a matter of public notoriety—of a part of the Register, as had been officially testified by the Lords of Council and Session to the House of Lords, on the 27th February 1760. For these reasons, "it was necessary, in order to supply the place of the said charter of Novodamus, that the TENOR of it should be proved," as prayed for; † that the claimant "was possessed of an ABRIDGED COPY OR ABSTRACT of the said charter," which could be produced in court

with the summons; that such copy or abstract was authenticated by the said Thomas Conyers, who had the original charter in his keeping; and the same, and other documents offered, are sufficient evidence for proving the existence and tenor of the said charter."

It may be here as well to give some notion of what is called in Scotland a charter of "Novodamus," and which we find, in our limited knowledge of the subject, some difficulty in squaring precisely, in point of character, with the tenor of the instrument put forward as such by the prisoner, as indicated in a former page.‡ A charter of *Novodamus* does not, in spite of its name, necessarily imply the existence of a former charter, but may be equally an original or a renewed grant. Everything comprised by it is held to be effectually conveyed to the donee, though he may have had no antecedent title to it. The true nature of the charter of *Novodamus*, however, is, when the superior, whether the crown or a subject, really *re-grants* the matters therein contained, to remedy any defect or flaw in the former grant; or where the grantee seeks to avoid burthens chargeable in respect of "casualties," *i. e.*, emoluments fallen due to the superior.§ It may be well to bear in mind this attempted explanation, when hereafter adverting to one or two clauses in the famous "Excerpt-charter of *Novodamus*." When the fact is adverted to of the prisoner having, as long before as the years 1815 or 1816, consulted Mr Corrie, his family solicitor, a respectable professional man, who, as we have seen, had been the confidential adviser and trustee of the prisoner's father, on the subject of his claim to the earldom, and then acknowledged to him that "he had *no documents*, or *no effectual documents*, to support his claims;" and that it was not till ten or eleven years afterwards that we have any trace of his movements or proceedings; when, in 1826, he produced the

† *Ante*, p. 339.

§ *ERSKINE'S Institutes*, book ii. title iii. sec. 23.

* *Ante*, p. 334.

† *Ibid.* p. 337.

affidavit of Hovenden, the statement of Gordon, and the certificate of Conyers, and three years afterwards, the memorable "excerpt" charter, of which he had heard for the first time from Mr Banks in March 1829; when all this is borne in mind together, the above narrative affords matter for curious speculation, especially as to the state of facts existing in 1815, and the developments of the ensuing ten years. We must, however, hasten on.

The crown lawyers of Scotland were at length startled by the persevering energy, system, and success, which characterised and attended the movements of the prisoner, and the results to which they were leading. In the year 1833, therefore, they resolved to undertake the task of demolishing the entire fabric of his proofs; and, on the 15th of January, in that year, commenced formidable proceedings, denominated as those of "*Reductive Improbation*," having for their object to obtain a solemn judicial declaration that everything done by the prisoner, in the prosecution of his claim, was null and void, and, as such, should be rescinded and annulled; that his vouchers were fabricated, and that he was not the great-great-great-grandson of the first Earl of Stirling, and had no pretensions to assume the name or title, or exercise the rights appertaining to it. Thus, at length, challenged to mortal encounter, the prisoner brought forward, in support of his claim, several witnesses, as well as documentary evidence, among which were the affidavits of Henry Hovenden and Sara Lyner, aforementioned; but the celebrated "*excerpt*" having, as we have seen, been twice rejected by the courts in former proceedings, did not make its appearance in this new and serious stage of the proceedings. It appears to have been a very protracted inquiry—three years having elapsed between the commencement of it, in January 1833, and the delivery of the Lord Ordinary's (Cockburn) interlocutory judgment, at the close of December 1836.

The object of the prisoner in that inquiry was to prove the pedigree, as

it appears in a previous page*—that is, to connect the *three John Alexanders* there set forth, in the relationship of father, son, and grandson; and the object of his opponents, of course, was to disprove such relationship. Judging solely from the materials placed before us by Mr Swinton, and not familiar with the details of Scotch legal proceedings, we are astonished at the time taken to demolish the most flimsy structure of pedigree proof we ever remember to have seen—always excepting in the droll page of the novelist. In the English courts, half a day would have sufficed for the purpose. Nay, we question whether any member of the Bar, with any legal reputation to lose or endanger, would have seriously offered, or at least pressed on a judge and jury, such evidence as was tendered, and long and solemnly canvassed, by the Scottish courts in this instance: we are speaking, of course, without the advantage of having the full proceedings before us. Yet we are bound to say that the judgment pronounced by the Lord Ordinary† is exceedingly able and convincing, and characterised by a courteous and dignified gravity, pregnant with indications of suppressed severity of comment on the audacity which could have offered such materials for judicial exposition. The case stood briefly thus, according to his important and decisive judgment:—It was admitted by the crown lawyers that the prisoner was the lawful son of Hannah Alexander, and that she was the daughter of the Reverend John Alexander, said to have died in 1743; but they strenuously denied its having been proved that he was the son of John (No. 2) of Antrim, or that this last was the son of John (No. 1) of Gartmore, the fourth son of the first Earl of Stirling. "*The whole of the defender's case*," said the Lord Ordinary, emphatically, "*depends upon the genuineness of these two descents*." In attacking that case, the crown lawyers proved incontestably, at starting, that John of Gartmore (so called because he had married Agnes

* *Ante*, 338.

† SWINTON, Appendix, 22.

Graham, the heiress of Gartmore), had issue by her a *daughter* only! Unless, therefore, *as intimated by the Lord Ordinary during the progress of the case*, and coincided in by the prisoner's counsel, he contracted a SECOND MARRIAGE, the whole case fell to the ground. The lucky suggestion would appear to have been eagerly snatched at; and it was asserted that there had been such a second marriage. Of such marriage, however, not a tittle of evidence was offered, except inferentially, from the supposed proofs of his having had a son! "The fact of the second marriage," said the Lord Ordinary, "is not even attempted to be established by any direct or separate evidence." This seemed like laying the axe at the root of the tree. Next came the Lord Ordinary to the proof of "the *filiation* of the two Johns," consisting of the two affidavits of Sara Lyner and Hovenden, a tombstone inscription, and the examination of two very old female witnesses. First, as to the affidavits, even admitting them to be genuine, they seemed liable to almost every conceivable objection to their admissibility: made, not by relatives or connections, but by total strangers to the family, of whose means of knowledge nothing was known; in no judicial cause! before no opponent capable of questioning and testing their truth, under circumstances "with which," said the Lord Ordinary, "we are not in the slightest degree acquainted!" made, not *post litem*, but *post controversiam motam*! They might have been voluntary affidavits, and made for fraudulent purposes! The Lord Ordinary, notwithstanding, deemed it advisable, on the whole, not to reject them *in limine*, as inadmissible, but to admit them for the purpose of considering their credit and efficacy. The affidavit of Sara Lyner was so ludicrously deficient in all formal attributes of authenticity and attestation, that "it was difficult to imagine any document introduced into a case with poorer recommendations." The affidavit of Hovenden presented itself in an infinitely more questionable shape; for, though professing to have

been sworn before, and to bear the signature of, one "J. Pocklington," admitted by the crown lawyers to have been a Baron of the Exchequer in Ireland in 1723, and attested by Hovenden, whose signature purported to be again attested by a notary-public; they averred that the paper on which the body of the affidavit was written had been originally covered with some other writing, constituting the affidavit really sworn before Baron Pocklington; and which had been chemically removed, to make way for the existing affidavit. "The evidence of this charge of fabrication," said the Lord Ordinary, "which is not directed against the defender (*i. e.*, the prisoner) personally, consists of the appearance of the paper, and the uncontradicted testimony of Dr Fyfe and Dr Gregory, two gentlemen of undoubted character and skill in chemistry." "The Lord Ordinary," he continues, in a forbearing tone, "is very unwilling to hold this painful charge to be legally established,* and therefore carries the result no further than this—that the paper is exposed to a degree of suspicion which makes it unsafe to rely on this document." Having thus tolerated the reception of these two disgraced documents, let us see what they contained. That of Sara Lyner stated that she was eighty-four years old; nursed the mother of the Rev. John Alexander (John No. 3) when he was born; and that he was the son of John of Antrim (No. 2), in whose family she had lived twenty years. But how did she connect John of Antrim with John of Gartmore? How pass over this great gulf? She said that *her mother* had lived in the service of Lord Montgomery; and while there, no date being given, Mr John Alexander of Gartmore, a son of the Lord Stirline, in Scotland, came to see my lord, and brought with him his only son—who was—Mr John Alexander of Antrim! This is the whole scope of the affidavit—the unexplained *assertion*, or

* Neither of these affidavits formed an article of charge in the indictments against the prisoner.

conjecture, of that solitary witness—"he brought with him his only son, and that son was—John of Antrim!" The second affidavit is one which, if true, settled the whole matter comprehensively, completely, and conclusively, in favour of the prisoner. Mr Hovenden commenced by the invaluable statement, that he was "intimately acquainted with the reverend minister, John Alexander, grandson, and only male representative of John Alexander of Gartmore, the fourth son of William, first Earl of Stirling, in Scotland;"—which said John Alexander was formerly of Antrim; "but was then (16th July 1723) dwelling in Warwickshire, in Great Britain!" It was to establish, as facts, the above neat little course of descent, that this affidavit had been offered in evidence: but the above pregnant sentence formed only an introductory statement, the body of the affidavit consisting of an account of its deponent having been informed by the said Rev. John Alexander (John No. 3) that the original charter of the earldom was in the possession of Thomas Conyers; to whom the deponent went at the particular desire of Mr Alexander, on the 10th July 1723, and was shown the original charter, in Latin, dated the 7th December 1639: and then followed "a faithful translation of the clause" which operated that signal change in the original destination, under which the prisoner claimed. And, finally, there was indorsed, or subscribed, to their affidavit, the following memorandum, purporting to be by a son of the aforesaid Thomas Conyers:—

"I willingly bear testimony to the truth of this statement, and the written affidavit. Lord Stirling's charter was trusted to my late father in troublous times, by y^e dec^d Mary, Countesse of Mr Alexander, without the present Earl's consent.

"Carlow, 20th July 1723.

"THOS. CONYERS."

By "the present Earl," was meant the fifth and last Earl of Stirling—who survived the year in which this

affidavit purported to have been made, sixteen years! It is pertinent here, with a view to subsequent elucidation, to remind the reader of another similar attestation, by this Mr "Thomas Conyers," to the accuracy of Mr William Gordon's abstract of the same clause of limitation in the charter in question.

As this affidavit was put forward before the Lord Ordinary only for the sake of its statement of pedigree, he despatched it on the same ground as that on which he had disposed of the affidavit of Sara Lyner—viz., as only a general assertion by a stranger to the family, with no circumstance stated in support of that assertion. So much for the affidavits. Then comes some tombstone evidence.

"Tombstones," said the Lord Ordinary, with a sort of subdued sarcasm, "have sometimes gone far to decide pedigrees; but probably none were ever founded on, in circumstances like the one relied on by the defender;" and the reader will probably be of the same opinion. The evidence consisted of an alleged inscription on a tombstone in the churchyard at Newtown-lands in Ireland; which inscription, quoth the Lord Ordinary, drily, "is very strong in the defender's [the prisoner's] favour; *as strong as if it had been composed for this very case!*" The reader will bear in mind this observation, as we shall hereafter have occasion to present him, in full splendour, with this "Inscription." Suffice it to say, for the present, that the tombstone which bore it was confessedly not in existence; the copy relied on was alleged to have been inscribed on a page in a Bible, which also was confessedly not in existence! And the shape in which the copy was presented was—a piece of paper, purporting to have been that page in that Bible! The alleged leaf was headed thus:—"Inscription on my grandfather's [John No. 1—of Gartmore] tomb, at Newtown: copied for me by Mr Hum. Lyttleton." Who this last gentleman was, no one knew: no one proved his handwriting—but we shall shortly hear something not a

little curious about him. And the only evidence in support of this all-important document was a sort of certificate by four persons—that “this leaf *taken out of poor John's Bible*, is put up, with the other family papers, for my son *Benjamin*. Done this 16 Dec. 1766, in the presence of my friends, who, at my request, have subscribed their names as witnesses!” The absurdity of all this is cuttingly exposed by the Lord Ordinary. It was then sought to corroborate this alleged “copy” by showing that there really had been such a tombstone: and how, thinks the reader? By the evidence of a pauper eighty years old, the widow of a mason, who, forty-four years before, had *told her* that he had seen a tombstone in the floor of the old church, with the words, “John Alexander, Esq., Antrim,” upon it; and that he had built this stone into the walls of the church for better preservation. If so, it was safe and visible in the wall at the time of his telling her that fact—viz., in 1792: and that fact was directly and conclusively disproved by evidence!

Finally, the old pauper aforesaid, and another elderly woman, were called to speak to statements concerning the fact of relationship in dispute, exceeding in absurdity even what has gone before—strangers' hearsay, upon hearsay, upon hearsay! For instance, one of them, a stranger, says—“I heard my *grandmother* say, that *she* heard *her father* say! that the said John of Antrim was *come of the Alexander* from Scotland, and was *nearly related to the Earl of Mount Alexander*, in Ireland. I heard my *grandmother* also say that *she* had heard from *her father*, that John of Gartmore was—the Honourable John Alexander, and was the father of John of Antrim!”*

“On the whole,” concludes the Lord Ordinary, “he is of opinion that the evidence, whether considered in its separate parts, or as a whole, is utterly insufficient to sustain the verdicts. And it is impossible not to be struck with the number of collateral facts by

which, if the claim be well founded, the proof might have been strengthened, but in which there is a total absence of evidence.” The Lord Ordinary decreed accordingly, leaving the claimant to the Stirling peerage prostrate. Bitter, indeed, must have been his mortification and disappointment, at the blight thus fallen upon the fond hopes of so many years, rendering all his anxieties and exertions utterly bootless.

But how little he must have dreamed of the wonderful events which a very few months, nay, weeks, were to produce! They may have appeared to him like two direct and very special interpositions of Providence in his behalf!

It will have been remembered that the Lord Ordinary emphatically declared the two great gaps in the pedigree proof to be—the Rev. John Alexander's (John No. 3) being the son of John of Antrim (John No. 2); and John of Antrim's being the son of John of Gartmore (John No. 1). This decree was pronounced on the 10th December 1836; and on the 8th day after that disastrous event, viz., on the 18th December 1836, pressed by pecuniary difficulties, and the vindictiveness of his enemies, the prisoner says he went to France, under a feigned name, and lived in great seclusion in or near Paris, till the 15th August 1837, when he returned to Scotland, to vote at the election of Scotch Peers. During that otherwise cheerless interval, occurred, in April and July, the two signal discoveries above alluded to. We shall give his own summary of the results thus obtained, quoting from the official “Minute” given in by him to the court on the 15th Nov. 1837, in the name of his two eminent counsel.

“The defender has lately come to the knowledge of various documents which tend very materially to strengthen the evidence of propinquity, in regard to THE TWO DESCENTS referred to by the Lord Ordinary. By these newly-discovered documents he trusts he will be able to establish that John Alexander of Gartmore (John No. 1),†

* SWINTON, Appendix, p. xxix.

† Refer to the Pedigree, ante, p. 338.

after he had lost his wife, Agnes Graham, heiress of Gartmore, married, as his second wife, Elizabeth Maxwell, of Londonderry, by whom he had an only son, JOHN, who died at Derry in 1665-6. That this son John (John No. 2), son of John of Gartmore, received his early education at Londonderry; was afterwards sent to a German university; and, after being many years abroad, settled at *Antrim*; married Mary Hamilton, of Bangor; had by her one son, John (John No. 3), and two daughters; died on the 19th April 1712, and was buried at Newtown. That Mr Livingston, an old friend of the family, wrote the *Inscription* * to his memory, which was on the tombstone at Newtown-lands; and that Mr Lytleton's copy of it was known in 1765. That the said John Alexander of Antrim (John No. 2) had encouraged the taste of his son (John No. 3) for the ministry of the Church of Scotland; and that the said son, who was the Rev. John Alexander, died at Dublin on the 1st November 1743."†

These decisive facts were sought to be substantiated by two classes of documents, of an equally remarkable character, respectively finding their way to the prisoner anonymously, in April and July 1837—the one in London, the other at Paris.

I. Mr Eugene Alexander, the third son of the prisoner, happening, towards the close of April 1837, to call at Messrs De Porquet and Co.'s, book-sellers in London, who had been occasionally employed by the prisoner, was informed by them that they had just received by the twopenny post, a packet addressed to them, which enclosed another, addressed, "The Right Hon. the Earl of Stirling," accompanied by the following note, addressed to them, in a lady's hand, without disguise:—"Mrs Innes Smyth's compliments to Messrs De Porquet and Co. She had fully intended calling in Tavistock Street, when she arrived in town yesterday from Staffordshire; but another commission she had to execute having prevented her, she is induced to send the enclosed packet to them by

the twopenny post, with her particular request that they will forward it *instantly* to the Earl of Stirling, or any member of his lordship's family, whose residence may be known to them.—Hackney, April 19."—Who "Mrs Innes Smith" was, neither the prisoner nor any of his family could discover; and she remains to this hour, for aught we can gather to the contrary, utterly unknown, having come like a shadow, and so departed. Mr Alexander seems to have been not a little flustered by the occurrence; and having immediately consulted some solicitors, he and they went to a notary-public the next morning, and in his presence opened the packet addressed to his father; when they discovered another packet, cased in parchment, on which was written, "Some of my wife's family papers." On seeing this, he instantly exclaimed, "That is my grandfather's handwriting!" "This inner packet," continued his son, in writing to his father, "was sealed with three black seals, all the same impression—evidently my grandfather's seals—not like those *we* have." Accompanying this inner parchment packet was the following mysterious note:—"The enclosed was in a small cash-box, which was stolen from the late William Humphreys, Esq., at the time of his removing from Digbeth House, Birmingham, to Fair Hill. The person who committed the theft was a young man in a situation in trade which placed him above suspicion. Fear of detection, and other circumstances, caused the box to be carefully put away, and it was forgot that the packet of papers was left in it. This discovery has been made since the death of the person alluded to, which took place last month. His family, being now certain that the son of Mr Humphreys is the Lord Stirling who has lately published a narrative of his case, they have requested a lady going to London to leave the packet at his lordship's publishers, a channel for its conveyance pointed out by the book itself, and which they hope is quite safe. His lordship will perceive that the seals have never been broken. The family

* *Post*, p. 352. † SWINTON, App. p. xxxi.

of the deceased, for obvious reasons, must remain unknown. They make this reparation; but cannot be expected to court disgrace and infamy. — April 17, 1837.* — “The sheet of paper on which this was written,” said young Mr Alexander, “is a mourning one, with a deep black edge round, owing to the death of the thief.”† The inner packet was then taken to a proctor, and opened by young Mr Alexander in the presence of four witnesses, and proved to contain five documents, all bearing most decisively, and indeed conclusively, on that precise part of the prisoner’s case pronounced by the Lord Ordinary to have been defective! One was a genealogical tree, purporting to have been made out by a “Thos. Campbell,” on the 15th April 1759; and, to be sure, it was calculated to settle the whole matter: for it set out the two marriages of John of Gartmore, the second being with “Elizabeth Maxwell of Londonderry;” that by this second wife he had a son, John, “who married Mary Hamilton of Bangor, and settled at Antrim, after living many years in Germany — died 1712 — buried at Newtown.” That this John of Antrim had a son, “John, sixth Earl of Stirling (*de jure*),” and died at Dublin, 1st November 1743; and that this *de jure* sixth Earl of Stirling had four children; the eldest, “John born at Dublin, 1736, heir to the titles and estates;” the second Benjamin; the third, Mary; the fourth, “Hannah, born at Dublin in 1741.” And this inestimable document bore the following inscription: — “Part of the genealogical tree of the Alexanders of Menstry, Earls of Stirling in Scotland, showing only the fourth and now” [*i. e.*, 1759, being twenty years after the death of the fifth earl, and sixteen years after that of the *de jure* sixth earl] “existing branch. Reduced to pocket size from the large emblazoned tree, in the possession of Mrs Alexander, of King Street, Birmingham, by me, Thos. Campbell, April 15, 1759.” The next enclosure consisted of a letter from the above Benjamin to his

elder brother, the Rev. John (both uncles of the prisoner). Benjamin spoke, in this letter, about the missing tombstone; its place, however, being supplied by “Mr Lyttleton’s copy, which can be proved;” about “Campbell’s copy of grandfather A.’s portrait being very like;” that a curious memorandum was pasted at the back, “from which it appears that our grandfather [*i. e.*, John of Antrim] received his early education at Londonderry, under the watchful eye of Mr MAXWELL, his MATERNAL grandsire. At the age of sixteen, the dowager-countess wished him to be sent to Glasgow College; but at last it was thought better for him to go to a German University. He attained high distinction as a scholar, remained many years abroad, and visited foreign courts. Yr. affe. bro. BENJAMIN ALEXANDER. Lond. 20 Aug. 1765. To Rev. Mr Alexander, Birmingham.” A second letter was to the same person, from one “A. E. Baillie, dated 16th September 1765. He also alludes to the missing tombstone. “But I shall be ready,” he proceeds, “to come forward, if you want me. I was about twenty-one when I attended y^r grandfather’s funeral [*i. e.*, John of Antrim], Mr Livingston, a very old friend of y^r family, wrote y^e inscription, w^b y^e claimant from America got destroyed. I always heard that y^r great-grandfr. y^e Honble. Mr Alexander (who was known in the country as Mr Alexander of Gartmoir), died at Derry: but for y^e destruction of y^e parish registers in y^e North by y^e Papists during y^e civil war from 1689 to 1692, you mit have got y^e Certifs. you want.” The above letters, thus first brought to light in April 1837, after “fifty years” had elapsed since the alleged theft of the packet containing them, became, when connected with the statements made in the affidavit of Eliza Pountney, the prisoner’s sister, on the 27th of January 1826, deeply significant. We allude to her observations respecting her two uncles, John and Benjamin, and their intention to have claimed the peerage, but for their “dying in their prime;” and, on comparing

* SWINTON, p. 19. † Ibid. App. p. xliii.

dates, it will be found that the one (John) is alleged to have died in 1765, the year in which the above letters were addressed to him; and the other (Benjamin) three years afterwards—respectively in their twenty-ninth and thirty-first years! To return, however, to the mysterious black-sealed packet—it contained also “a beautiful miniature painting of John of Antrim.” “The contents of the parchment packet must, I suppose,” continued the son, in writing to his father, “have remained untouched (if it was put up just before the removal to Fairhill) fifty years, which accounts for the admirable state of preservation it is in. The thief never dared break the seals.” The prisoner stated in his minute “that these seals were identical with that on a letter which was in evidence, of the Rev. John Alexander (John No. 3); that the impressions of both must have been made with the same seal.”*

Such were the contents of “the DE PORQUET PACKET,” as it may be called, of which the prisoner, when required by the court, on his lodging them in evidence, to state how he came by them, solemnly “declared that he never had any knowledge of the existence or contents of these documents until he heard that the packet had been transmitted to Messrs De Porquet, as above mentioned.”†

It is also right here to apprise the reader, and recommend him to weigh the fact, that Mr Corrie, the solicitor already mentioned, whose veracity no one attempted to impeach, distinctly proved, at the trial of the prisoner, that the words, “some of my wife’s family papers,” on the outside of the packet, were really in the handwriting of the prisoner’s father; and that the latter had told him, at Fairhill, in 1796–8, or 1797, that he had *lost valuable documents* at the time he removed from Digleth to Fairhill, since called “The Larches.”‡—So much for what we may, for distinction’s sake, designate No. 1, the *English* windfall. Let us now proceed to No.

II. The *French* windfall. Here will

be found accumulated wonders upon wonders!

The prisoner’s wife, it has been seen, had been an intimate friend of Mademoiselle le Normand of Paris since the year 1812; and she kept up her correspondence with that lady according to the prisoner’s statement to the Court, up to the period of the pending investigations before the Scottish Courts. The prisoner had, he said, been frequently advised to prosecute inquiries after evidence in France; and his wife had made application on that subject to, amongst others, Mademoiselle le Normand, then upwards of seventy years old, having an extensive literary connection, and facilities for acquiring information from public offices. She promised her assistance. The prisoner, having quitted England on the 18th December 1836, arrived at Paris on the 21st of that month. On the 12th of the ensuing July he waited upon her; and she told him “that she had received a document,” to quote his own account of the matter, “which might be of importance to him; and, after conversing for some time about his family, she drew from under a heap of papers a packet, and showed to him its contents—an old map of Canada, with a great number of documents written on or pasted against the back of it, ‘all relating to his family.’” “Various inquiries were afterwards made by her, for the purpose of tracing the individuals in whose custody the document had been previously preserved, but without effect.” She said that this map, in its now state, had come into her possession on the 11th of July 1837, and was accompanied by an anonymous letter in French, dated the 10th of July 1837, of which the following is a translation:—

“I have just heard, Mademoiselle, that you take a lively interest in the success of an Englishman, who claims, as a descendant of the Earl of Stirling, the inheritance of his ancestor in America. If the autographs which I have the honour of sending you can insure his success, I shall be delighted

* SWINTON, xxxii. † Ibid. xxxv. ‡ Ibid. 181.

to have found an opportunity, by rendering him a service, of gratifying you, and at the same time discharging a small portion of the obligations which I owe to you. I regret, however, that the duties of an office which I at present hold do not permit me to make myself known in this affair of Lord Stirling's. You, who know a great deal about it, will feel no surprise that a man in office (*qu'un homme en place*) should not dare to interfere in it openly. I have already stated that I am under obligations to you. Yes, Mademoiselle, I am, and more than once have I had the advantage of consulting you: even at the time when I was menaced with a signal disgrace, it was you who saved me, by a salutary *éclaircissement* seasonably given. You have not obliged an ungrateful man. On all occasions I do justice to your talents; and to you, while I live, I shall be devoted and grateful. You may well imagine that I purchased this old map of Canada solely on account of the autographs, which are very curious. The note on the margin of Mallet's note (in the right corner) is said to be Louis the Fifteenth's. The autographs of Fénélon and Flechier are no less precious: and the dealer, who sold me the map in 1819, * assured me that it had belonged to Louis XVI., which is probable enough, from what I have just said of his grandfather's marginal note. The dealer lived, in 1819, on the Quai Voltaire, but since that time many changes have taken place, and his name has escaped me. Receive, Mademoiselle, the homage of the distinguished sentiments which I have vowed to you, and which you so well deserve.—M. Versailles, 10th July 1837.

"I confide this packet to trustworthy persons. They will go to consult you: do not be surprised to find it on some table or chair, in your study."

This mysterious "M," equally with the mysterious "Mrs Innes Smyth," has hitherto (as far as we know) remained altogether undiscovered; and

* See *post*, p. 374.

the prisoner solemnly declared "that he never knew of the existence, or contents, of the several documents on the map of Canada, until he saw the map itself in the hands of Mademoiselle le Normand, in July 1837; that he had never dreamed of seeking in France the document illustrative of his own pedigree; and it was with the greatest surprise that he afterwards learned that those documents, now produced, had been discovered, and were calculated to throw light on that pedigree; and, in fact, no one was more surprised."† We doubt whether a more extraordinary document, or series of documents, than this map, with its accompaniments, has ever, either before or since, challenged deliberate judicial investigation.

"In consequence of the cession," said the prisoner, ‡ "as is alleged, of Nova Scotia to France, by the Treaty of Breda, in 1667, and its subsequent recovery by Great Britain in 1690, and in consequence of the stipulations in regard to it in the Treaty of Ryswick in 1697, everything connected with the possession of that country became a matter of much interest at the Court of France. The grants to the Earl of Stirling thus came to be well known, and the effect of them much canvassed. Influenced by these considerations, he was induced to direct anxious searches to be made in France, for any documents that might throw light on the family of Stirling. It appears from these documents," continued the prisoner, briefly but correctly indicating their general character and tendency, "that a Monsieur Mallet wished to obtain information in England as to the actual state of the descendants of William, Earl of Stirling; but that, having died suddenly, one of his friends—a M. Brossette—applied to FÉNELON, Archbishop of Cambrai, for the wished-for information; and that the Archbishop, knowing the intimacy that subsisted between the Marchioness de Lambert and Mr John Alexander

† SWINTON, App. xxxviii. ‡ Ibid: xxx. vi.
§ Ibid. Appendix, p. xxxii.

of Antrim, applied to her on the subject: that she accordingly wrote to him, who, in return, sent her a full communication as to the family history: that this letter was transmitted to her by the Archbishop, who forwarded it to M. Brossette."

Anxious to avail himself of this important new evidence, the prisoner, having previously prevailed on Madlle. le Normand to procure attestations of the hand-writings of the different parties, sent over his son, Charles Alexander, from Edinburgh to Paris, for the purpose of receiving the precious documents, and bringing them over in safety to this country. They were delivered to him by Madlle. le Normand on the 8th November 1837: on that day he quitted Paris for Scotland, and a week afterwards—viz., on the 15th November, 1837—the existence of these documents, as well as of the De Porquet packet, and an outline of the points they were to prove, was formally certified, and they were laid on the table of the Court of Session at Edinburgh: and a sensation they were well calculated to produce.

The map purported to bear date (and it is an all-important one) A. D. 1703, and bore the following printed heading—"Carte du Canada, ou de la Nouvelle France, par Guillaume Delisle," the most celebrated geographer of his day. With the exception of one of the two documents *pasted* on the back of the map—that in English—all the remaining indorsements were in French, and every word of them deserves weighing. We shall take them in the order in which they appeared in the indictment.

I. First came the note or memorandum, signed "Ph. Mallet," dated "Lyons, 4th August, 1706. During my residence in Acadia in 1702, my curiosity was excited by what I was told of an ancient charter, preserved in the archives of that province. It is the *Charter* of Confirmation, or *De novo damus*, of date 7th December 1639, by which Charles I. of England renewed, in favour of William, Earl of Stirling, the titles and dignities which he had previously conferred

upon him, and all the grants of land which he had made to him from 1621, in Scotland and America. My friend Lacroix gave me a copy of it, which, before my departure, I took the precaution of having duly attested. From this authentic document I am now about to present some extracts (translated into French for such as do not understand Latin), in order that every person who opens this map of our American possessions may form an idea of the vast extent of territory which was granted by the King of England to one of his subjects. If the fate of war, or any other event, should return New France and Acadia under the dominion of the English, the family of Stirling would possess these two provinces, as well as New England, within the boundaries assigned by the charter. The order of succession to this inheritance is as follows:"—and then followed a fuller quotation from the limitations by way of *Novo damus*, than even those given by Gordon and Hovenden, and certified by Conyers.* The memorandum thus concludes:—"Thus the King of England has given to the Earl, and has secured to his descendants in perpetuity, enough of land to found a powerful empire in America."

II. Memorandum subscribed to the above, signed "Caron Saint Estienne," and dated "Lyons, 6th April 1707."

"The above note is precious. I can certify that it gives in few words an extremely correct idea of the wonderful charter in question. As to the copy of it, it is attested by the keeper of the records (l'archiviste) and the Acadian witnesses, and must be in entire conformity with the register of Port Royal. While at Quebec, I had heard of the grants to the Earl of Stirling; but my friend M. Mallet was the first who procured me a perusal of the charter. This extraordinary document extends over fifty pages of writing, and the Latin anything but classical; still, as a Canadian, somewhat interested in its contents, I am bound to say that I read it from end to end with as much curiosity as

* *Ante*, p. 339.

satisfaction. The late M. Mallet was a man whose good qualities and rare understanding make us regret a death which snatched him so suddenly from his friends. He had foreseen that the copy would not make the charter known in France: hence he carried the idea of writing, on one of the beautiful maps of Guillaume Delisle, a note which all the world could read with interest. Had he lived long enough he would have added to this interest: for he wished to obtain information in England as to the then situation of the descendants of the earl who had obtained the charter; and all the information which he might have received respecting them, he would have transferred to this very map. But, after all, with the two documents which he has left to us, no person in France can question the existence of such a charter."

III. Memorandum, also subscribed to that of M. Mallet, signed "*Esprit, Ev. de Nismes*," [i. e. *Esprit Flechier*, Bishop of Nismes] and dated Nismes, 3d June 1707.

"I read lately, at the house of Monsieur Sartre, at Caveirac, the copy of the Earl of Stirling's charter. In it I remarked many curious particulars, mixed up with a great many uninteresting details. I think, therefore, that the greatest obligations are due to M. Mallet, for having, by the above note, enabled the French public to judge of the extent and importance of the grants made to that Scottish nobleman. I also find that he has translated the most essential clauses of the charter: and in translating them into French, he has given them with great fidelity. M. Caron Saint Estienne has asked me to bear this testimony. I do so with the greatest pleasure."

IV. Letter from "John Alexander, of Antrim" [John No. 2], to the Marchioness de Lambert.

"ANTRIM, 27th August 1707.

"I cannot express to you, madam, how sensible I am of the honour of your remembrance. My sincere thanks are due also to Monsieur de Cambray,

since he, by facilitating the journey of my friend M. Hovenden, was the means of my being so quickly put in possession of your letter, and the copy which you have been good enough to send to me of the note respecting my grandfather's charter. The questions which you ask of me I shall endeavour to answer to the best of my ability. I am not, as you suppose, heir to the family titles. The present head of our family is Henry, fifth Earl of Stirling, descended from the third son of my grandfather. He resides within a few miles of London; has no children: but has brothers, of whom the eldest is heir-presumptive. Of the first son no descendants survive, except the issue of his daughters. The second son died without issue. My father was the fourth son; his first wife was an heiress of the house of Gairmore, in Scotland; my mother, of the Maxwell family, was his second wife. But though he had daughters by his first wife, he never had any sons but me. To complete this family genealogy, I must tell you, madam, that my wife is a cadette of the Hamilton family, a ducal house in Scotland; and that she has borne me a son called John, after my father and myself, and two daughters. I have, at present, so little idea of the possibility of the title and estates of Stirling devolving on my children, that I have encouraged my son in his inclination for the ministry of our Church of Scotland; and with that view he is now prosecuting his studies at the university of Leyden, in Holland.

"I shall preserve with care the interesting note of M. Mallet. The charter was at one time registered in Scotland, as well as in Acadia; but during the civil war, and under the usurpation of Cromwell, boxes containing a portion of the records of that kingdom were lost during a storm at sea; and, according to the ancient tradition of our family, the register in which this charter was recorded was among the number of those that perished. Such, madam, is all [!]" that I can say in reply to your questions; for it is impossible, in this country of

Ireland, to obtain any other information with regard to the registered charter. I believe that my grandmother" [the widow of the first earl] "gave the original charter, which she brought from Scotland when she came to take up her abode in Ireland, to her son-in-law, Lord Montgomery, in order that he might preserve it carefully in Castle Comber, where he resided. I shall ascertain what this family may have done with it; and I shall have the honour of acquainting you with any discovery which I may make. I shall never forget, madam, your kindness towards me, or the charms of the society which I have always enjoyed at your house. While I live, I shall not cease to be attached to you, by the most respectful devotion.

"JOHN ALEXANDER."

V. Memorandum authenticating the

"HERE LIETH THE BODY OF
JOHN ALEXANDER, ESQUIRE,
LATE OF ANTRIM,
THE ONLY SON OF THE HONOURABLE JOHN ALEXANDER.
HE WAS THE FOURTH SON OF THAT MOST ILLUSTRIOUS
AND FAMOUS STATESMAN,
WILLIAM EARL OF STERLINE,
PRINCIPAL SECRETARY FOR SCOTLAND :
WHO HAD THE SINGULAR MERIT OF PLANTING AT HIS
SOLE, EXPENSE THE FIRST COLONIE IN
NOVA SCOTIA.
HE MARRY'D MARY, ELDEST DAUGHTER OF THE
REV. MR HAMILTON OF BANGOR,
BY WHOM HE HAD ISSUE AN SON, JOHN, WHO
AT THIS PRESENT TIME IS THE PRESBYTERIAN MINISTER
AT STRATFORD-ON-AVON, IN ENGLAND,
AND TWO DAUGHTERS,
MARY, WHO SURVIVES, AND ELIZABETH, WIFE OF
JOHN M. SKINNER, ESQ., WHO DIED 7 JAN. 17¹⁰₁₁,
LEAVING THREE CHILDREN.
HE WAS A MAN OF SUCH ENDOWMENTS AS ADDED
LUSTRE TO HIS NOBLE DESCENT, AND WAS UNIVERSALLY
RESPECTED FOR HIS PIETY AND BENEVOLENCE.
HE WAS THE BEST OF HUSBANDS :
AS A FATHER MOST INDULGENT : AS A FRIEND
WARM, SINCERE, AND FAITHFUL.
HE DEPARTED THIS LIFE
AT TEMPLE PATRICK, IN THE COUNTY OF ANTRIM,
ON THE 19TH DAY OF APRIL 1712."

above by FENELON, Archbishop of Cambray!

"The friends of the late Mr Ph. Mallet will doubtless read with great interest this letter of a grandson of the Earl of Stirling's. M. Cholet, of Lyons, setting out to-day, 16th October 1707, on his way home, will have the honour of delivering it to M. Brossette, on the part of Madame de Lambert. To authenticate it, I have written and signed this marginal note.

"FR. AR. DUC DE CAMBRAY."

The above letter of "John Alexander of Antrim," with Fénélon's marginal authentication, was *pasted* on the back of the map; as also was a portion of the envelope of the letter with the seal upon it of the aforesaid John of Antrim.

VI. Inscription on the tablet erected to the memory of John of Antrim (John No. 2).

The above was written in imitation of print, in small capitals, and surrounded by an ornamental etching, or bordering, as if to represent the shape of the tablet. On the margin was written :—

"This is a faithfull copy of the Inscription to the Memory of John Alexander, Esquire, upon the Tablet over his Tomb, at Newtown-Ardes, Co. of Down, Ireland.

"W. C. GORDON, Jun.

"Stratford-upon-Avon, Oct. 6, 1723."

This inscription and attestation were pasted on the back of the map; and adjoining it was the following corroborative attestation, forming

VII. Memorandum, written on the back, but without any date or signature.

"This inscription has been communicated by Madame de Lambert. Since the death of Mr Alexander in 1712" (John of Antrim), "this lady has not ceased to bestow on the son of this distinguished man marks of her goodwill and friendship. This son is favourably known in England as a Protestant clergyman, and a learned philologist. In the knowledge of Oriental languages, he is almost without a rival. He is at the head of a college for the education of young clergymen, established at Stratford, in the county of Warwick."

VIII., and finally, came a royal autograph, adjoining Memorandum No. I.,—i. e., that of Ph. Mallet—in the alleged handwriting, bold and flowing, of Louis XV. ! as follows :—

"This note is worthy of some attention, under present circumstances; but let the copy of the original charter be sent to me."*

Such was the "French windfall," as we have termed it: a staggering accumulation of proposed proofs such as, when examined, might perhaps not unreasonably excite the astonishment, and then, in some degree, the

* "Cette note est digne de quelque attention dans les circonstances présentes—mais qu'on m'envoie la copie de la charte originale." [Observe the spelling of the words—"circumstances," "originale."]

suspicious of the Scottish legal authorities.—As we have seen, the De Porquet and Le Normand packets of documents were placed before the Court of Session on the 15th of November 1837, on behalf of the prisoner. During the ensuing twelvemonth, interlocutory investigations, we apprehend, were being carried on; the result being, that on the 14th of November 1838, the Lords of Session ordered the prisoner "to give in, within fourteen days, an articulate condescendence of the facts and circumstances how he came to the knowledge of the documents in question, and how they came into his possession."† In obedience to this order (we know not whether it be an order of course), he duly gave into court substantially the account which has been incorporated into the foregoing narrative. Growing still more dissatisfied with the aspect and position of the prisoner's case, especially in relation to these additional proofs, and not satisfied by the articulate condescendence which he had already given in, the Lords of Session, on the 11th of December, ordered "the *unusual* proceeding," as Mr Swinton himself characterises it,‡ of a personal "judicial examination" of the prisoner. He therefore came before the Second Division of the Court of Session, on the 18th December 1838, and was subjected to a lengthened and searching series of questions by the Lord-Advocate. We presume that the Court had power to take this "unusual" step, as it may well be termed, which, be it observed, was in the course of a merely *civil* proceeding, as far as we understand the matter; and (speaking with the utmost deference and respect towards the Scottish judicial authorities) it does seem an extraordinary stretch of power, to call one of the parties to a civil suit before the Court, and subject him, *volentem volentem*, to a highly criminating course of examination, afterwards to be made available on prosecution—and that, too, without any caution that his

† SWINTON, App. 84.

‡ Ibid. Pref. xvii.

answers might be used against him, nor any intimation that he need not answer unless he chose.

This "judicial declaration" is given at length by Mr Swinton,* and after a formal entry begins thus:—"Compared Alexander Earl of Stirling, and interrogated by the Lord-Advocate, if he had read the condescendence given in, in his name? Declares, that he has. Interrogated, if he desires to make any additions, or alterations, on that condescendence? Declares, that he is ready to make any further explanations that may be asked." And then commences an able and acute examination, with the critical question—"When he was first made acquainted with the note issued by Lord Cockburn, dated 10th December 1836?" proceeding with his journey to France;—inquiring how he spent his time there, and particularly respecting his intercourse with old Mademoiselle le Normand; his pecuniary obligations to her; the securities he had given her; what she said on delivering to him the memorable map of Canada—particularly whether she told him whom she suspected to have sent it to her: as to which, he said, "she had never told him." On this the court interposed, and asked—"Who he himself suspects to be the person by whom the document had been sent? Declares that he cannot venture to name that person, being of such exalted rank as to make such a declaration on his part unsafe and improper, without positive proof. That he neither can, nor dare do more, having only strong suspicions on the subject."† He was closely questioned as to his wife's intercourse with Mademoiselle le Normand; and as to the first tidings he received concerning the De Porquet papers. He was then asked several questions respecting the alleged robbery of his father in 1793-4, when he removed from Digbeth House to Fairhill. Declares, "that he has heard his father mention that he had lost a cash-box containing some hundred pounds, but never heard him say anything of papers,"‡ which

* SWINTON, App. 37. † Ibid. 39. ‡ Ibid. 41.

seems a striking and candid answer. Among the remaining questions and answers, are the following:—"Interrogated, whether he ever heard, before the reception of the packet from Messrs De Porquet, that John Alexander, fourth son of the first Earl of Stirling, had been married a second time, after having been first married to a daughter of Graham of Gartmore? Declares, *he never had*; but he suspected it, as a general conclusion drawn by him and his friends from other facts in the case. He had never before heard that John Alexander had been married to a lady of the name of Maxwell, as connected with his family." This, again, is worthy of much consideration.

Shortly after this examination, the prisoner was apprehended on the charge of forgery; and almost immediately, viz., 14th February 1839, underwent another close examination by the Sheriff-Substitute, but only after giving him the caution usual in England—that it was optional with him to answer, and that, if he did answer, what he said might be used in evidence against him. Four days afterwards, viz., on the 18th February 1839, he was subjected to a second lengthened examination; and finally to a third, on the 6th of March 1839; but on this last occasion he gave only one answer to the few but important questions put to him—"That, by his agent's advice, he declines to answer any questions;" and well he, or any one similarly situated, honourably might!

He was committed for trial, which was ordered to take place on the 3d April 1839, but, at the instance of the prisoner's counsel, was postponed till the 29th of that month.

The indictment was necessarily long, and founded on three classes of alleged forgeries: first, the excerpt charter of *Novodamus*; secondly, the De Porquet packet of papers; lastly, the Le Normand packet of papers—all of which the prisoner was charged with having forged, or having used and uttered, knowing them to have been forged. The indictment runs not, as in England, in the third person, but in the

second, as addressed to the prisoner, personally, throughout: *e. g.*, "Alexander Humphreys, or Alexander, pretending to be Earl of Stirling, you are indicted and accused, at the instance of John Archibald Murray, Esq., her Majesty's Advocate, for her Majesty's interest, that," &c. All its allegations are direct and simple, and divested of technical verbiage. We shall now endeavour to present the reader with an intelligible account of an intensely-interesting trial; one which must have been listened to, from first to last, with breathless interest.

"ALEXANDER HUMPHREYS, or Alexander, *pretending* to be Earl of Stirling," said Lord Meadowbank,* addressing the prisoner, on his being first placed at the bar, "you have been served with an indictment charging you with the crimes of forgery, and of feloniously using and uttering, as genuine, certain documents therein described, and alleged to have been forged and fabricated, you knowing them to be so. Are you guilty, or not guilty?"

"Not guilty, my Lord," replied the prisoner, standing beside his friend, Colonel D'Aguilar. But now occurred the question, how was he to be tried? As a peer of Scotland, or as a commoner? If as a peer, the court before whom he stood was incompetent to try him; for he was entitled, by the Treaty of Union, as a peer of Scotland, to be tried as peers of Great Britain are tried—*viz.*, in the Court of the Lord High Steward; and the mode of procedure is that prescribed in 1825 by Statute 6 Geo. IV. c. 66, which required the Scottish judges to be summoned and to sit with the English judges, and according to the law of Scotland. This privilege, however, as will be presently seen, the prisoner waived. Then came another question: was he to be tried as a "*landed man*?" by which is meant a landed proprietor. It is an ancient privilege of landed men,

by the Scotch law, that they should be tried only by their peers, *i. e.*, their brother landed proprietors. In process of time, however, this right has been so far modified as to entitle the prisoner to a *majority* only of his landed brethren. This right also, as will shortly be seen, the prisoner waived—having probably no pretence to the possession of any lands in Scotland, except such as he claimed as Earl of Stirling. To meet any possible difficulty, however, on this score, two lists of assize had been prepared—respectively consisting of "*landed men* and common jurors," and "*special jurors* and common jurors:" the former to be adopted "if the said Alexander Humphreys claimed, and was entitled to, the privilege of a landed man;" the latter, "if he did not claim, or was not entitled to, the privilege of a landed man."

After the prisoner had pleaded not guilty, the clerk in court read aloud the "defences" which, according to the procedure in Scotland, had been lodged in court for the prisoner, signed by his two counsel. They were entitled "Defences for Alexander Alexander, *Earl of Stirling*,† against the indictment at the instance of her Majesty's Advocate."

These defences were comprised in two paragraphs. The first stated that, as Lord Cockburn's interlocutor, though not final, had decided against the prisoner's claim to be the heir of the Earl of Stirling,‡ "he was advised that he was not in a condition to plead the privilege of peerage; but was bound to acknowledge the competency of that court to proceed under the indictment before it." The second proceeded thus:—

"The panel pleads not guilty of the libel generally; and, even particularly,§ he denies that he had the slight-

† This was subsequently altered to "*claiming* to be Earl of Stirling."—SWINTON, p. 48.

‡ *Ante*, p. 345 *et seq.*

§ This is widely different from the course adopted in English courts. On the substance of the indictment being read to the prisoner, unless he plead guilty, or demur to the legal sufficiency of the indictment, on the face of it, he pleads simply Not Guilty; which throws on the prosecutor the whole *onus* of proving

* The duty here performed by the President of the Court, is in England discharged by an officer of the court called the Clerk of Arraigns.

est ground to suspect that all, or any, of the documents libelled on were forged or fabricated. He produced them under legal advice, in the belief of their being genuine, and useful for the support of his interest.*

A third paragraph consisted of an application to postpone the trial, on the ground that the prisoner was not prepared for it, "as *one of his counsel* and his agent had gone to London and Paris to make inquiry as to several of the witnesses for the Crown, and such further investigation as might be necessary for his defence." The words which we have placed in italics indicate a course of procedure at variance with that adopted at the English Bar.

As soon as these defences had been read, the prisoner's counsel rose and said, "My Lords, I do not mean to claim for the panel the privilege of a landed man; nor do we intend to state any objections to the relevancy of the indictment." By "relevancy," a technical term in Scotch law, is signified "the justice and sufficiency of the matters stated in the indictment, to warrant a decree in the terms asked;"† and, according to the criminal law of Scotland, this objection must be taken, if at all, before the trial. If it be not, the prisoner cannot make it the subject of arrest of judgment by the court, but must refer it to the law advisers of the crown, after the sentence has been pronounced by them, to have such weight attached to it as may be deemed proper, with a view to pardon or mitigation of punishment.‡

"Let the relevancy of the indictment be determined," said the Solicitor-General, "by your lordship's case, and gives the prisoner the right of offering every defence he has, except those arising out of a previous acquittal, conviction, or pardon, in respect of the same charge. These must be specially pleaded.

* If this be the usual course in Scotland, it seems nugatory, as being only a detailed repetition of Not Guilty, with an intimation of the exculpatory evidence intended to be relied on.

† *BELL'S Dictionary of the Law of Scotland*, p. 844. In civil cases this rule is reversed—*Id. ib.*

‡ *ALBION'S Practice of the Criminal Law of Scotland*, p. 651.

ships pronouncing the usual interlocutor."

LORD MEADOWBANK.—"Alexander Humphreys, or Alexander, attend to the interlocutor of the court," which the clerk read as follows:—

"The Lords Commissioners of Justiciary find the libel RELEVANT to infer the pains of law, but allow the panel a proof in exculpation and alleviation; and in respect that the panel has by his counsel waived his right, if he any have, to be tried by a jury, of which the majority shall consist of landed men, remit the panel, with the libel as found relevant, to the knowledge of the *ordinary assize*."

Lists of all the witnesses and documentary proofs, on both sides, were, as it would appear, interchanged; and the trial having been postponed from the 3d to the 29th April 1839, on the latter day it commenced—not, however, as in England, with a preliminary statement on the part of the prosecutor of the course of expected proof, but with the evidence itself in detail. After that on both sides had been adduced, the counsel for the crown addressed the jury, and then the counsel for the prisoner; after which Lord Meadowbank summed up. We beg to say that we think the English course of procedure greatly preferable to the Scottish, in commencing the trial with a temperate and lucid statement of the case intended to be made out by the crown, enabling both the court and the jury, but especially the latter, to obtain an early clue through the labyrinth of oral and documentary proof, to see the drift of it, and appreciate, in going along, the significance of what is being done. In the present case, for instance, the jury, with the exception of the scanty gleam of light afforded by the indictment read to them by the officer of the court, with the defences, were plunged *instantly* into a series of details of somewhat complicated legal proceedings, and legal and other documents; the Solicitor-General feeling the necessity many times of interposing, to intimate that "the object of *this* or *that* evidence was to show so and so," &c. &c. And,

indeed, if the jury really saw their way with only middling clearness through the evidence, as it was *being adduced*, they were a far shrewder and more experienced jury than it has been our fate to see for many a long year, even at Guildhall, or Westminster, where juries have long been celebrated for their discretion and acuteness. In the present case, a half-hour's calm preliminary statement, by the Solicitor-General, of the points of the charge, and the application to them of the evidence, would have greatly assisted the jury, possibly even the court, and, long afterwards, let us sorrowfully add, ourselves. In despair we leaped out of the intricate evidence into the speeches of counsel, and the summing-up of the judge, afterwards recurring to the evidence and appendices. At length we found ourselves on sure ground, and in a clear atmosphere; and grudging not the effort we had made to overcome the obstacles of which we have been complaining, and also the difficult technicalities of Scottish criminal law procedure.

It will be recollected that the indictment embraced three distinct classes of alleged forgeries; the excerpt charter of *Novodamus*, the Le Normand packet, and the De Porquet packet. To establish the "using" and "uttering" of these instruments, evidence was given of their having been adduced, on the part of the prisoner, in the various Scottish courts in which he had from time to time asserted, and endeavoured to maintain, his claims. Lord Cockburn's important judgment of the 10th December 1836 was also put in evidence: with the examinations of the prisoner, some of his correspondence, and the instruments charged by the indictments to be forgeries. Let us take these last in their order; and—

I. THE EXCERPT CHARTER OF *Novodamus* OF THE 7TH DECEMBER 1639. Was this a genuine or a forged document? The acute and learned scrutiny to which it was subjected, elicited remarkable and decisive results. We know, from the documents printed by Mr Swinton, a little more than

was disclosed to the Court—namely, that the mysterious discovery of this "excerpt" was communicated to the prisoner from Ireland by his indefatigable agent, Mr Banks, on the 17th March 1829. All that was proved before the Court was, that the prisoner delivered it, in that year, to his law-agents, who immediately commenced proceedings in the Scotch courts to "*prove its tenor*." Let it be observed that "this most suspicious scrap of writing," as the Solicitor-General styled it,* professed to be only an "excerpt" of a lost charter of King Charles I., dated the 7th December 1639—not an entire copy, but only "an abridged copy!" and the exigencies of the prisoner's case had required that *that* identical excerpt should have been in existence as long ago as the year 1723,† since it bore an indorsement‡ by "Thomas Conyers," attesting its authenticity, dated the 10th July 1723. It will be impossible, however, to appreciate the force of the delicate but decisive evidence brought to bear upon this unlucky document, unless we have a distinct idea of the different stages of progress through which a royal charter would have to pass in the year 1639. They were explained at the trial by several learned and experienced officials; and we have taken some pains to clear away technicalities, and present their evidence briefly and popularly. The stages, then, through which a royal charter had at that time to pass, were three.

First came the "SIGNATURE." This was not, as the word would ordinarily import, and in England, a mere name signed, or mark, but an entire document, constituting the foundation of the proposed charter, and containing its essential elements. It was drawn up in English, by a Writer to the Signet, and brought by him, on a given day, to a Baron of the Exchequer to be examined, in order to ascertain that it was correct, especially as to the *reddendo*, or annual feu-money due to the Crown. On being

* SWINTON, p. 196.

† *Ante*, p. 341, *et passim*. ‡ *Id.* *ib.*

satisfied of its accuracy, the Baron marked the signature as "revised;" and in due time the sign-manual was affixed to it. It was then complete; was recorded in the Exchequer Record; and retained by the Keeper of the Signet. There were subscribed to it only the date, and the words, "At Whitehall, the day of . . ."

Secondly, Warranted by the possession of this revised "signature," the Keeper of the Signet issued a "*Precept to the Privy Seal*," which was simply a Latin translation of the English signature, and was recorded in the Privy Seal Office. That office then issued this precept to the Great Seal; and it is to be noted that this Privy Seal Precept had subscribed to it the words, "*PER SIGNETUM*," which seems to be an abbreviation of the words, "*per preceptum datum sub signeto nostro*."

Thirdly, As soon as the Privy Seal Precept had reached the Chancery Office, the functionaries there drew up formally, and *in extenso*, THE CHARTER, which was sealed with the Great Seal; the Privy Seal Precept on which it was grounded, either remaining in the Chancery Office, or being lodged in the General Records of Scotland. This completed charter, alone, had a testing clause; and it was the Privy Seal Precept only which bore, as we have seen, the words "*per signetum*."

See, then, the origin, progress, and completion of a Royal Charter in 1639—SIGNATURE; PRIVY SEAL PRECEPT; CHARTER; each having its appropriate depository or record—the Signet Office, the Privy Seal Office, the Great Seal Office; to which, indeed, may be added a fourth, the COMPTROLLER OF EXCHEQUER'S REGISTER; where also was recorded every instrument of the above description, to enable that officer to account to the Crown for the feu-duties. These four old registers, or records, are all completed from periods long anterior to the year 1639, down to the present day, with the exception of a *hiatus* of twelve leaves at the commencement of the fifty-seventh volume of the Great Seal Record; but the contents of these twelve leaves

were clearly ascertainable from the indexes of other records. "It is the boast of this country," said Lord Meadowbank, in summing up, to the jury,* "and always has been, that its registers have been kept with a regularity unknown elsewhere."

If, therefore, there had ever been such a charter as that of which the document under consideration professed to be an excerpt, that charter ought to have been found in *every one of the four records or registers* above mentioned.† Add to this, that William Earl of Stirling was himself, at the time, the Keeper of the Signet,‡ and also, "a man of talent, and attentive to his own interests—not likely to have received grants of such unusual importance as those contained in the charter in question, without seeing them properly carried through the seals."§

Now for the Excerpt itself, and its physical aspect. It was written on several single leaves of paper, not numbered, apparently cut recently out of some book, and stitched together, the outside leaf being brought round and stitched down on the remaining leaves. The colour was a uniform deep brown—equally so underneath the margin covered over at the stitching. There were ruled red lines round the pages. The writing appeared "fresh"—at all events, not so old as the paper; and was not in a Scotch chancery-hand, or any hand used in the Register Office, but like that used in engrossing deeds in England and Ireland. The language of the excerpt was Latin—but such Latin!—and it extended to about thirty English common-law folios, containing seventy-two words each. At the beginning of the charter, on the right-hand side, were the abbreviations "REG. MAG. SIG. LIB. LVII."—i. e. "*Registrum Magni Sigilli Liber LVII.*"

The only portion of the excerpt with which we shall trouble the reader *in extenso*, is the conclusion—the testing part—which, especially the part in

* SWINTON, p. 309.

† Per Lord Meadowbank, *id. ib.*

‡ *Ibid.* p. 84.

§ *Ibid.* p. 94.

italics, is worthy of the utmost attention; and we adopt the translation used at the trial.—“Witnesses: the most reverend father in Christ and our well-beloved councillor, John, by the mercy of God Archbishop of St Andrews, Primate and Metropolitan of our kingdom of Scotland, our chancellor; our well-beloved cousins and councillors, James, Marquis of Hamilton; Earl of Arran and Cambridge; Lord Avon and Innerdale; Robert, Earl of Roxburghe; Lord Ker, of Cesford and Casertoun, Keeper of our Privy Seal; our beloved familiar councillors, Sir John Hay of Barro, Clerk of our Rolls, Register and Council; John Hamilton of Orbestoun, our Justice-Clerk; and John Scott of Scotstarvet, Director of our Chancery, Knights. At our Court of Quhythall, the 7th day of the month of December, in the year of God 1639, and of our reign the 15th year.

“[GRATIS]

“*Per Signetum.*”

On the back of this document was written—“Excerpt from the original charter to William, Earl of Stirling, 7th December 1639. T. C.” [*i. e.*, Thomas Conyers.] This indorsement was also alleged in the indictment to be a forgery. Here, then, we have an “excerpt” or “abridged copy” of a royal charter, dated the 7th December 1639, granted by King Charles I. to one of his most distinguished subjects, conferring high dignities and vast possessions; a charter yielded to the anxious importunity of the Earl in his old age, “when labouring under great dejection of spirits, after losing three of his sons, who had given him the highest hopes, and fearing, from the declining health of two of the survivors, that his honours might, at no distant period, pass to a collateral branch of his family.”* And this earl, too, the head of the office in which the charter originated.

Now, behold, FIRST, that the records of every one of the four departments above mentioned—viz., the Signature Record, the Comptroller of the Exchequer's Record, the Privy Seal Record, and the Great Seal Re-

cord—had been rigorously searched, and not the faintest trace of such an instrument appeared in any of them!—it being sworn that, had it ever existed, it must have been found in ALL! “This might possibly have been accounted for,” said the Solicitor-General,† “had there been but one register only; more especially if a blank had occurred in that register through the obliteration, imperfection, or loss of a volume, or part of a volume. But where there are four independent registers, and these all concurring to supply, in the fullest details, the necessary evidence as to all other charters” [of which various instances were proved at the trial], “and when you find that this charter is not recorded in any one of them, it is quite impossible to believe—it would really be asking too much of credulity itself, to believe—that such a document could ever have existed.” If this instrument were the handiwork of a forger, it may be reasonable to suppose him capable of appreciating the efficacy of the negative evidence which might be brought against him, and to endeavour to supply it. This brings us, SECONDLY, to the memorandum in the margin of the first page of the excerpt—*i. e.*, *Reg. Mag. Sig. Lib. LVII.*—which meant that the charter itself was to have been found “in the fifty-seventh volume of the Register (or Record) of the Great Seal.” We have already seen,‡ that in point of fact, twelve leaves at the beginning of that volume were amissing; and the suggestion, or rather assertion, of the prisoner, when he commenced his legal proceedings to prove the tenor of the missing charter, was, that it was to have been found in one of these twelve leaves, “which had perished or disappeared—that being a matter of public notoriety, and was so observed by the Lords of Council and Session in their return of 27th February 1740, to an order of the House of Lords of the 12th June 1719, respecting the state of the Peerage in Scotland.”§ Here, then, are only

† SWINTON, p. 205.

‡ *Ante*, p. 341.

§ *Ante*, p. 341: SWINTON, App., p. vii.

* *Ante*, p. 339.

twelve leaves missing; and on referring to one of the writings indorsed on the map of Canada, in the Le Normand packet, the writer stated he had seen the charter, and "it extended over fifty pages of writing."* On this subject, Lord Meadowbank proposed the following question to the jury:—"Putting aside the evidence of this index, could you have believed, when there is no evidence or trace of this charter in the volume where it should be found, that it could, *out of its place*, have been crammed into the twelve pages that are lost, when the prisoner's own evidence tells you the charter extended to fifty-eight?"† To proceed, however—What will the reader suppose was proved at the trial? First, two ancient indexes of the missing twelve pages of vol. lvii. were produced, unerringly indicating the charters which had stood recorded there, and among which was *not* the charter in question, but only those of date *subsequent* to the year 1639; while all the charters of that year 1639 stood regularly recorded in the previous—the fifty-sixth volume; and among them, also, was *not* to be found the charter in question. Mr George Robertson, one of the joint keepers of the records, thus certified on oath:—"I have searched the principal record of the fifty-seventh volume of the Great Seal Register, and at the beginning of the said fifty-seventh volume, twelve leaves have been destroyed or lost. The charters originally recorded in these missing leaves are, however, ascertained with precision from two ancient indexes of the Great Seal Record. I have examined these, and can state as the result, that the twelve leaves now lost did not contain any charter, diploma, patent, nor other grant, in favour of William, Earl of Stirling, nor of any Earl of Stirling, nor of any person of the name of Alexander." Still further, however, the words on the margin,

* *Ante*, p. 350.

† SWINTON, p. 311. This seems a slight inaccuracy, on the part of the learned Judge, of fifty-eight instead of fifty.

"*Reg. Mag. Sig. Lib. LVII.*," purported to have been written there by the framer of the excerpt in the year 1723; and three experienced official gentlemen declared their confident opinion, that no such style of marking was coeval with the making of the excerpt itself. It was established at the trial that this mode of referring to the Great Seal Records was *quite a modern one*, commencing with the year 1806 only; a fact proved by the very author of the arrangement and his assistant; by whom, in the latter year, the records were rebound, and the titles made uniform, for facility of reference, in lieu of the loose and discordant methods of reference till then in use! Other experienced officials proved that till the year 1806 no such mode of reference as "*Reg. Mag. Sig.*" existed, and they gave specimens of the former mode: *e. g.* "*Chart. in Archivis*," appeared in a law book of 1763; and in a subsequent edition, in the year 1813, the reference was altered to "*Mag. Sig.*" If, therefore, the "excerpt" were a modern forgery, it would almost appear as if the fabricator, aware of the missing leaves of vol. lvii., but not knowing *how very recent was the abbreviated lettering on the back*—"Reg. Mag. Sig."—had taken it for granted that it was coeval with the original formation of the volume, or at least had been there for a century—*viz.*, since 1723. But if this reference, "*Reg. Mag. Sig. Lib. LVII.*," were a forgery, it must have been a very modern one, necessarily *later* than the year 1806, the date of Mr Thomson's rebinding of the record, and changing the titling. We have seen, however, that the prisoner had accompanied his father to France in the year 1802, and did not return to England till 1814; and in the subsequent year told his own agent, Mr Corrie, that he had no documents to support his claim. Is it a fair inference from these dates, that, down to at least the year 1815, the famous excerpt was not in existence—or at least unknown to the prisoner? So much for the negative evidence that any such genu-

ine document as the alleged charter of 7th December 1639 had ever existed. But, **THIRDLY**, the excerpt itself seemed to furnish a conspicuous and glaring demonstration of spuriousness; we allude to the alleged attestation of the charter by ARCHBISHOP SPOTTISWOODE, in the capacity of "OUR CHANCELLOR" of the kingdom, and, as such, Keeper of the Great Seal. Now Spottiswoode, the Archbishop of St Andrews, was undoubtedly for a considerable period Chancellor of Scotland; and his name is found in the records as an official witness to all charters from the crown, passing the Great Seal of Scotland during the time that he held it. In the excerpt charter, he appears in that capacity at the alleged date of the instrument—viz., the 7th December 1639; but, lo! not only had he ceased to be Chancellor on the 13th November 1638, *but he had actually died on the 26th November 1639*—that is, eleven days before that on which he was made to attest the alleged Charter of Novodamus! These facts were proved beyond all doubt, both directly and collaterally: as, for instance, by an instrument of a nature similar to that before the court, dated only four days afterwards—namely, the 11th December 1639—a charter in favour of the city of Edinburgh, and attested, &c., not by "John, Archbishop and Chancellor," but by his successor, the Marquis of Hamilton,—whose appointment on the 13th November 1638 was proved,—and this very "William, Earl of Stirling and Canada," and others: all of whom were also witnesses, on the same day, to another charter to Heriot's Hospital. Here, then, was a great charter, making under the Great Seal magnificent grants to a Scottish nobleman, and attested by a non-existent Chancellor, whose temporary successor had been installed in office thirteen months previous to the date of the charter! Mr Swinton acutely points out* the source of this blunder, assuming the excerpt to be altogether a forgery. Archbishop Spottiswoode, as has been

* Pref. p. xxi.

seen, ceased to be Chancellor on the 13th November 1638, and died on the 26th of the ensuing November—i. e., eleven days before the date of the alleged charter. Now, from the date of the Archbishop's resignation, till the appointment of the Earl of Loudon as Chancellor in 1641, the Great Seal was in commission, the head commissioner being the Marquis of Hamilton. But it singularly happens, that, in the catalogues of the Scottish Chancellors appended to Spottiswoode's History, and other works, the list during the reign of Charles I. and the Commonwealth, is given as follows:—

"1622, George Hay, Earl of Kinnoul.

"1635, John Spottiswood, Archbishop of St Andrews.

"1641, John Campbell, Earl of Loudon.

"1660, William Cunningham, Earl of Glencairne."

—no mention being made, nor any notice taken, of the interval between the resignation of the Archbishop and the appointment of the Earl of Loudon. From this it may be inferred that the fabricator of the document, if it were fabricated, took it for granted that from 1635 to 1641, and consequently in the year 1639, falling within that interval, the Archbishop was Chancellor of Scotland. But again—Is there any reason assignable for the supposed fabricator having pitched on the particular date of 9th December 1639? Yes! In Crawford's Life of the Archbishop, the death of that prelate is erroneously alleged to have occurred on the 27th December 1639!—i. e., just eighteen days after the completion of the alleged charter.†

FOURTHLY, there was apparently another great blot pointed out by the crown lawyers. Immediately after the above-mentioned *testing clause*, followed the words "*Gratis*.—*PER SIGNERUM*."‡ Now, it has been seen that the testing clause is the conclu-

† SWINTON, p. 209.

‡ When the precept issues in favour of a Writer to the Signet or of the Keeper of the Signet (as Lord Stirling then was), the precept passes the signet *gratis*: and that word is written at the bottom.—SWINTON, p. 84.

sion of only a completed charter. This "excerpt," therefore, if taken from any document, must have been taken from a completed charter. It could not have been taken from the Signature, nor the Signet Precept, nor the Privy Seal Precept, for in none of these instruments could such a clause appear. But in addition to this testing clause, appear the words "*Per Signetum!*" which are never to be found in any charter at all, but only in the Privy Seal Precept! So that here was a document containing, on the one hand, words (the testing clause) which are to be found in only a completed charter, and which could not exist in a Privy Seal Precept; and, on the other hand, certain other words (*Per Signetum*) never to be found in a completed charter, but only in a Privy Seal Precept! It was accordingly sworn unhesitatingly by all the professional witnesses, even on the strength of these conclusive elements of intrinsic evidence alone, that the document before the court could not be an excerpt, or copy, of any authentic writ of any description whatever, known in the law of Scotland. There seems some little force in the Solicitor-General's observation on this part of the case: "Gentlemen, is there not here, then, the clearest and most satisfactory evidence that this is not, and cannot be, an excerpt from any real or genuine document? There is an incongruity about it, which shows it could not have been copied from any document that ever existed. The writer of it, whoever he was, may have had a sort of glimmering of what it ought to have been; but still, in his ignorance, he has made a monster of it. It is utterly impossible, looking merely to the intrinsic evidence, that it could be the document which it professes to be."

FIFTHLY, Not satisfied with these vigorous assaults upon the genuineness and authenticity of this unfortunate document, the Scotch lawyers detected, as they considered, several serious intrinsic evidences of spuriousness. *First*, the alleged charter professed to convey estates which had

never belonged to the Scottish crown—viz., lands, provinces, and territorial rights in New England. "It is not possible," said Lord Meadowbank, and the professional witnesses supported him, "that a charter granted by a king of Scotland could convey, or be granted, as if it had conveyed, any property not belonging to the crown of Scotland. That such a SIGNATURE should have passed the Barons of Exchequer, and their officers, is beyond all belief:" for it must be remembered, that the "Signature" is, in its first stage towards a charter, submitted to a Baron of Exchequer, to be "revised," before the sign-manual is affixed to it. This is, undoubtedly, a fact lending great weight to any really inconsistent or objectionable provisions in the "Signature," or subsequent charter. *Secondly*, In crown charters of resignation, to which that in question professed to belong, it was proved that the *dates* of the resignation were "invariably given:" here were none—and this objection also must have escaped the somnolent Baron of the Exchequer of 1639. *Thirdly*, The "charter" stated a resignation to have been made by a grandson of the Earl of Stirling, in the Earl's lifetime; which resignation the grandson had no title to make; and till he had, *having* nothing, he could resign nothing according to the law of Scotland; * and such could never have passed the Exchequer. *Fourthly*, The alleged charter professed to convey the titles and dignities of the earldom; the Earl professed to resign his earldom, 'which the king, by that deed was made to reconvey, with precedence, from the date of the first grant. "This," said Lord Meadowbank, and the evidence supported him, "I believe to be altogether unprecedented. It was totally unnecessary—the precedence conveyed, following as a matter of course. I have seen many such grants, and never such a dignity reconveyed, with such a stipulation." *Fifthly*, While the invariable practice, in royal charters to peers, is to address

* *Qui non habet ille non dat*, is also a rule of English law, subject to certain important exceptions.

the one concerned as "*consanguineus noster*," and never to give that title to a commoner, the alleged charter in question twice applied that title to Alexander, the son of the peer (consequently a commoner), and *not* to the Earl himself!

LASTLY, As to the structure and aspect of the "Excerpt." It had red lines round the margin, which, said the principal witness, Mr Thomson, the deputy-clerk register, "were not introduced till the year 1780; at least it has not come under my notice at an earlier period." Then, again, three gentlemen, "the most experienced," said Lord Meadowbank, "as to old writings that are to be found here or anywhere else," stated that, on looking at the document, they had at first sight not the least doubt or difficulty in saying, that they did not believe it to be genuine, but of *recent fabrication*. One of them, the Mr Thomson above mentioned, declared that the paper was older than the ink in which the words on the face of it were written; that where the paper was folded over and stitched down, it was of the same tinge with the body of the paper which had been exposed to the air, and which could not be, had it been folded for any length of time. Here it must have been so folded for at least a century. That the "excerpt" appeared to consist of separate leaves recently cut from a book—all of them half sheets detached from each other: and that where, under the cover, the paper should have been whiter, through non-exposure to the atmosphere, it was not of a different colour from the rest of it. Two eminent professors of chemistry were engaged by the Court to make experiments on a portion of the paper, in order to ascertain whether the dark colour of the paper was the natural result of age, or of artificial means used to obtain that result. The "doctors," however, "differed;" and their evidence, therefore, was properly discarded from the case. As to the character of the handwriting, one of the most experienced of the professional witnesses, Mr Mackenzie, a Writer to the Signet of thirty-six years' stand-

ing, made, in the opinion of Lord Meadowbank, "a very striking remark:" that the writing was in a peculiar hand, in imitation of old hand, which was altogether different from the Chancery hand in which charters in Scotland are written; that he had never before seen a copy made like the one in question, in old hand; and that a person sitting down to make a copy of such a charter, would do it in the running-hand of the country where it was written. "It is my duty to observe to you," said Lord Meadowbank, "that impressions made by such appearances," as the above, "on the minds of persons of skill, at first sight, are often of great weight. I leave this part of the case with this single observation—that the impression of these witnesses, when they first saw it, was to the prejudice of the genuineness of this document, as an excerpt from a genuine charter. Whether it was a writing somewhat older, or only thirty years old, seems to be very little to the purpose; but they said it appeared to be a document of recent formation—that that was the first impression made upon their minds, when it was submitted to their inspection." The Solicitor-General had thus closed *his* remarks on the subject of the above excerpt charter: "These considerations make the absence of all explanation as to the history of this document a most suspicious circumstance in the prisoner's case; so much so, with submission, that the possession of the deed must be accounted for by the prisoner in some way or other, before he can shake himself free from the charge that is now made against him."

The following is the substance of the answer to this portion of the case, offered by his eloquent and ingenious advocate. Unable to struggle against the bulk of the professional evidence tending to impeach the genuineness of the excerpt, and to disprove the existence of the alleged charter from which it was taken, Mr Robertson admitted that there were the great distinctions which had been alleged, between a completed charter and the

instrument which preceded it; that the words "*per signetum*" could not properly appear on a completed charter; that the document under consideration purported to be an excerpt of such completed charter; that the abbreviations "*Beg. Mag. Sig. Lib. LVII.*" could not appear on an excerpt of the date assigned by the prisoner to that which he had brought forward before the Scottish Courts; that it was proved that no such charter as that of the 9th Dec. 1639 was entered on record; and that Archbishop Spottiswoode could not have attested such an instrument, having undoubtedly ceased to be chancellor, and died previously to its date. But, he said, there was a vast difference between a genuine, though erroneous copy, and a forged principal; and also between a forgery, if such it were, so palpable as to challenge everybody's notice, and one so skilfully executed as to have been capable of deceiving all the Scottish law functionaries, and the prisoner's own law advisers, and himself, for a period of ten years, during which it had been courting examination, without forgery having been suggested till that prosecution. But *was* the excerpt proved to be a forgery? The statement, in the Lord Ordinary's judgment, relating to Hovenden's affidavit, showed that there was evidence, or something like it, in that proceeding, to establish the existence of the excerpt in 1723. The document was not a *copy* of the alleged charter, but only an excerpt or *extract*; and so might be explained the absence of some matters which would be in the original. And as to the admitted *errors*, the excerpt was made in Ireland, not in Scotland; was "an old *Irish* bungled copy"—a blundering *Irish* extract—"an *Irish* excerpt of a copy of a deed"—"an *Irish* copy." The marking "*Beg. Mag. Sig. Lib. LVII.*" in the margin may have been an *ex post facto* addition by some third person, who may be the person who had invented the story of Cromwell carrying off the records of Scotland. "*Consanguineus noster*," and the attestation of the Archbishop, were both Irish blunders. "And on such

evidence," said Mr Robertson, "this bungled excerpt is to be held proved to be a deliberate forgery!"* Before leaving this part of the case, let us remind the reader of the fact that it was Mr Thomas Christopher Banks who, according to his own letter, discovered this challenged "excerpt" in Ireland, and transmitted it to the prisoner; that the prisoner's counsel elicited at the trial that this Mr Thomas Christopher Banks had been seen, by a witness, alive, at Edinburgh, a few weeks before the trial, and at the office of the crown solicitor; and that Mr Banks was not called as a witness by either side.

Was then this "excerpt charter" a forgery, or a genuine document? The reader has before him the same materials for forming a judgment which were presented to the Edinburgh jury. Let us proceed now to—

II. THE LE NORMAND PACKET—*i.e.*, THE FRENCH EVIDENCE. It now lies before us, in the large *fac-simile*, nearly a yard square (one prepared for use at the trial), prefixed to Mr Swinton's report, representing eight different inscriptions, or indorsements, on the back of an old French map of Canada. Six of them, be it especially observed, are written on the paper itself of the map, and two on two other pieces of paper, afterwards pasted on the back of the map. We beg to repeat emphatically an observation already made,† that we doubt whether such an extraordinary document, or series of documents, as this map, with its accompaniments, has ever, before or since, challenged deliberate judicial investigation. It is at once fearful and ludicrous to regard these documents as forgeries, really *expected by their fabricators to be received as genuine*, and, as such, intrepidly submitted to competent scrutiny. So, at least, we own it would have appeared to ourselves; but, after all, there is nothing like a jury for deciding upon conflicting testimony. We cordially concur in the following admirable observations of Lord Brougham, delivered on an important occasion, when

* *Ante*, p. 335-6.

† *Ibid*. p. 349.

he was sitting as Lord Chancellor: * "The best tribunal for investigating contested facts is a jury of twelve men of various habits of thinking, of various characters of understanding, of various kinds of feeling, of moral feeling—all of which circumstances enter deeply into the capacity of such individuals. * * * The diversity of the minds of the jury, even if they are taken without any experience as jurors, their various habits of thinking and feeling, and their diversity of cast of understanding, and their discussing the matter among themselves, and the very fact of their not being lawyers, their not being professional men, and believing as men believe, and acting on their belief, in the ordinary affairs of life, give them a capacity of aiding the court in their eliciting of truth, which no single judge, be he ever so largely gifted with mental endowments, be he ever so learned with respect to past experience in such matters, can possess." Without presuming therefore to express, or even to suggest or insinuate, anything like dissatisfaction with the conclusions arrived at by the jury with reference to the class of facts now before us, but more fully laid before them, we request the reader to imagine himself a jurymen, under a sacred obligation to resist prejudice and guard against first impressions.

It is proper to remind the reader that the essence of the prisoner's pedigree, as he endeavoured to establish it before Lord Cockburn, consisted of proof that the Rev. John Alexander (John No. 3)† was the son of John of Antrim (John No. 2); and that this John No. 2 was the son of John of Gartmore (John No. 1). "The whole of the case," said Lord Cockburn on the 3d December 1836, "depends upon the genuineness of these two descents."‡ And his judgment, as has been seen, demolished the case which had been set up before him; for he pronounced "that the evidence,

whether considered in its separate parts or as a whole, was utterly insufficient."§ Now, if the writings on the back of the map were genuine and authentic, they exactly established, beyond all possibility of cavilling, the case which it was the prisoner's grand object to establish; going, moreover, far beyond the exigencies springing out of the adverse judgment of Lord Cockburn. For, first, those writings were designed to demonstrate not only that John No. 3 was son of John No. 2, and he son of John No. 1; but also, secondly, that the ORIGINAL CHARTER OF NOVODAMUS, of the 9th December 1639, was bodily in existence in the archives of Canada in the year 1702—as indubitably attested by those who had seen, and examined it, and made copies and extracts from it!—as testified by right reverend, noble, and royal personages, two very eminent bishops, a marchioness, and a king of France—all under their own hands. These singular writings, eight in number, have already been given *in extenso* and *verbatim*, but translated into English,|| and we hope that the reader will take the trouble of referring to, and carefully reading them, before he proceeds further with the present paper. We promise him that his trouble shall be amply repaid, by disclosures which he will then, and then only, be able fully to appreciate.

I. FIRST comes the statement, written on the back of the map, of a certain "M. MALLET," supposed to be a Canadian French gentleman, who simply makes the memorandum in question, without signing it, or mentioning his own name, but heading it, "*Lyons, 4th August 1706.*" He states that in the year 1702 he was residing in Acadia [Nova Scotia]. "His curiosity had been excited by what he was told of an '*ancient*' charter, preserved in the archives of that province—it is the charter of confirmation, *De Nova Damus*, of date 9th December 1639." He says, "My friend Lacroix gave me a copy of it, which I took the precaution of having duly attested. From

* STARKIE *On Evidence*, vol. i., p. 8, note G, 3d edit.

† See the Pedigree, *ante*, p. 338.

‡ SWINTON, Appendix, p. xxiii.

§ SWINTON, Appendix, p. xxix.

|| *Ante*, pp. 350-353.

this authentic document I am about to present some extracts, in order that every person who opens this map [the one in question] of our American possessions, may form an idea of the vast extent of territory which was granted by the King of England to one of his subjects. If the fate of war, or any other event, should replace New France and Acadia under the dominion of the English, the family of Stirling would possess these two provinces, as well as New England"—and then he quotes the "passages," as from the original charter. He proceeds, "The order of succession! to this inheritance is as follows:" and gives the entire of the new limitations of the alleged charter, *in extenso!* concluding, "Thus the King of England has given to the Earl, and has secured to his descendants in perpetuity, enough of land to found a powerful empire in America." So much for M. Mallet. Opposite his important memorandum was the following autograph memorandum (forming No. 8 in our series) of Louis XV. "This note is worthy of some attention, under present circumstances; but let the copy of the original charter be sent to me." Subjoined to M. Mallet's memorandum was another—

II. Signed "CARON SAINT ESTIENNE," and dated "Lyons, 6th April 1707," announcing the sudden death of "the aforesaid M. Mallet," whose loss was, it seems, an irreparable one to his friends, from his "good qualities and rare understanding." He it was who "first procured M. Saint Estienne a perusal of the charter—an extraordinary document extending over fifty pages," and the "unclassical Latin" of which shocked that accomplished reader. He says that "the above note of M. Mallet is *precious*—giving in few words an extremely correct idea of the wonderful charter in question." "As to the copy," which M. Mallet had "taken the precaution of having duly attested," M. Estienne informs us by whom it had been attested—viz., by the Keeper of the Records, and the Acadian witnesses, and it (the copy) must

be in entire conformity with the register of Port Royal." "M. Mallet had foreseen," observes his friend St Estienne, "that the copy would not make the charter known in France, hence he conceived the idea of writing, ON ONE OF THE BEAUTIFUL MAPS OF GUILLAUME DE L'ISLE, a note which all the world may read with interest. Had he lived long enough"—poor soul—"he could have added to this interest; for he wished to obtain information in England as to the then situation of the descendants of the earl who had obtained the charter; and all the information which he might have received respecting them, he would have transferred to this very map." M. St Estienne, however, concludes with the consolatory assurance, "But, after all, with the two documents" [*i. e.*, the duly attested copy, and his own memorandum on the map] "which he has left to us, no person in France can question the existence of such a charter." Here, then, were two gentlemen who had been actually favoured with a sight of the *ipsissima charta*; had obtained a copy of it from a third, M. Lacroix, himself, doubtless, similarly privileged; had taken the precaution of having that copy officially attested; and had given accurate extracts of its essential provisions. We are, however, under still further obligations to the solicitous vigilance of St Estienne; for two months afterwards he procured no less a person than Flechier, the Bishop of Nismes, to add the sanction of his eminent name to the authenticity of his—St Estienne's—memorandum. Accordingly, the obliging Bishop wrote on the map the following certificate:—

III. Signed "Esprit Ev. de Nismes," [*i. e.*, Esprit Flechier, Bishop of Nismes] and dated "Nismes, 3d June 1707." The Bishop had been shown by St Estienne the "copy" of the charter, and thus chronicles the event. "I read lately, at the house of Monsieur Sartre, at Caveyrac, the copy of the Earl of Stirling's charter. In it I remarked many curious particulars mixed up with a great many uninteresting

details;" "I think, therefore, that the greatest obligations are due to M. Mallet for having, by the above note, enabled the French public to judge of the extent and importance of the grant made to the Scottish nobleman. I also find that he has extracted the most essential clauses of the charter; and, in translating them into French, he has given them with great fidelity. Monsieur Caron St Estienne has asked me to bear this testimony. I do so with the greatest pleasure." Courteous and venerable Bishop of Nismes! But you must now make your exit, for an archbishop approaches, and that no less a personage than the great, the good, the justly revered FENELON, Archbishop of Cambray; who, in the ensuing autumn, viz., on the 16th October 1707, on the solicitation doubtless of St Estienne, and other zealous friends of the excellent deceased M. Mallet, condescended to write the following memorandum round the margin of a letter presented to him for that purpose, and forming No.—

IV. "The friends of the late M. Ph. Mallet will doubtless read with great interest this letter of a *grandson of the Earl of Stirling's*! M. Cholet, of Lyons, setting out to-day, 16th October 1707, on his way home, will have the honour of delivering it to M. Brossette, on the part of Madame de Lambert. To authenticate it, I have written and signed this marginal note. FR. AR. DUC DE CAMBRAY." *Nec Deus intersit*, says our ancient astute adviser, *nisi dignus vindice nodus*. Who, thinks the reader, was the writer of the letter thus solemnly authenticated by so distinguished a witness? Who but (the very man of all others on earth that was wanted) JOHN OF ANTRIM, John No. 2, John Alexander, grandson of the first Earl of Stirling! But proceeding, we have

V. A letter of John Alexander, dated "Antrim, 27th August 1707,"—i. e., five years only before his death—addressed to a certain Marchioness de Lambert, a lady of fashion, whose splendid hospitalities he therein commemorates. He thanks her ladyship for having, through the good-natured

interposition of the Archbishop, favoured him so soon with a copy of "the note respecting '*my grandfather's* charter.'" "I shall preserve with care the interesting note of M. Mallet. The charter was at one time registered in Scotland, as well as in Acadia: but during the civil war, and under the usurpation of Cromwell, boxes containing a portion of the records of that kingdom were lost during a storm at sea: and, according to THE ANCIENT TRADITION of our family, the REGISTER in which this charter was RECORDED was amongst the number of those that perished! Such, madam, is all that I can say in reply to your questions; for it is impossible, in this country of Ireland, to obtain any other information with regard to the registered charter. I believe that MY GRANDMOTHER" [i. e., the first countess] "gave the ORIGINAL CHARTER (which she brought from Scotland, when she came to take up her abode in Ireland) to her son-in-law, Lord Montgomery, in order that he might preserve it carefully in Castle Comber, where he resided. I shall ascertain what this family have done with it; and I shall have the honour of acquainting you with any discovery which I may make." He proceeded to give a remarkably neat and succinct account of that state of the pedigree which the Lord Ordinary had so ruthlessly annihilated; particularly explaining that John of Gartmore (John No. 1) had had a second wife, named Maxwell, "the mother" of the communicative writer. The benevolent and indefatigable Marchioness de Lambert seems to have pushed her inquiries, even after the death of her correspondent; for we find, constituting No.—

VI. A memorandum, though without signature or date, showing that "this lady had not ceased to bestow on the son," the Rev. John Alexander (John No. 3), "of this distinguished man" (John No. 2), "marks of her goodwill and friendship. This son is favourably known in England as a Protestant clergyman, and a learned philologist. He is at the head of a

college for the education of young clergymen, established at Stratford, in the county of Warwick." But this memorandum contained, as the first sentence, one of infinite significance—"THIS INSCRIPTION has been communicated by Madame de Lambert!" And that was document—

VI. Forming the inscription on the tombstone of John of Antrim,* whom it stated to be "the best of husbands, the most indulgent of fathers; as a friend warm, sincere, faithful; a man of such endowments, &c.; and universally respected for his piety and benevolence." But what was vastly more to the purpose, as far as concerned his descendants, he was also the only son of the Hon. John Alexander! who "was the fourth son of William, Earl of Stirling!" and "married Mary, eldest daughter of the Rev. Mr Hamilton of Bangor, by whom he had issue a son, John, who "at this present time is the Presbyterian minister at Stratford-on-Avon, in England." There could not be a doubt as to these facts, seeing that a certain "W. C. Gordon, junior," of Stratford-on-Avon, certified, on the margin of a copy of the inscription, that it "was a faithful copy!" Here, however, occurred a somewhat disagreeable fact. The figure "7" in the date, "Oct. 6th, 1723," was originally a figure "8" [i. e., 1823] "made into a 7." This swore Mr Lizars; on which "a juryman asks, Has there been an erasure?—A. No. It has been a different figure, corrected, and made into a 7. *Lord Meadowbank*.—Look at it again, Mr Lizars. Are you sure it has not been a blot? *The witness* (having carefully examined the document with a glass).—No, my lord, it has been decidedly a figure. There are both the top and middle of a figure here, my lord."

Such were the documents indorsed on and attached to the map of Canada; and a perusal of them suggests a few questions. *First*, According to them, the original charter of the 7th December 1639 was, in the year 1702, in Acadia, "in the archives there." How did it get thither, and why was it

sent? According to another part of the prisoner's case before the Lord Ordinary, the first earl, grievously dejected by the death of three of his sons, and fearing, from the declining health of two of the survivors, that his honours might at no distant period pass to a collateral branch of the family, obtained the new charter in question in 1639. This charter conveyed large estates in Scotland, as well as in America: "but," as Lord Meadowbank observed, "while the former were within reach, and easily accessible, those in Canada and the State of Maine, being" [*then, i. e. in 1639, the original grants having been made in 1626 and 1628*] "in the hands of the French, were altogether out of the reach of the grantees! In these circumstances, you are required to believe that the earl, in place of retaining this charter in Scotland, and getting it recorded and perfected *there*, where he might have got something by it, carried it to Canada, and had it recorded, where he could get nothing; and where, except as a matter of curiosity to men like Monsieur Mallet and his friend Lacroix, it was altogether a piece of waste paper. I again put it to you, is it credible that, if the earl had really got such a charter, and had wished to *change the destination* of his estates—and we know that he was a person of no ordinary talents—he would have omitted taking means for preserving in his own country the evidence of what he had done?"

But, *secondly*, again, the original charter was, in 1702, in Nova Scotia. Now we have seen that, in 1723, this "original charter" was, on the 10th July 1723, in Ireland, in the hands of a Mr Thomas Conyers, of Carlow, who "permitted" Mr Hovenden "to see it, and he did most minutely examine the contents:" and on the 20th of that month, in the same year, the son of the aforesaid Conyers certified that that charter "had been trusted to his late father, in troublesome times, by the deceased Mary, Countess of Mount Alexander." At that time the fifth earl was living. When, then, did the charter return from Acadia to Scot-

* See it in *extenso*, *ante*, p. 352.

land, and go thence to Ireland? According to the letter of John of Antrim on the map, his grandmother, the first countess, took it to Ireland to her son-in-law, Lord Montgomery, to be taken care of. That son-in-law died in 1670. What did he do with it? Did he send it to Canada?—and why? What were the three Earls of Stirling about, that they did not get possession of this document, the very foundation of their fortunes and honours? It goes, however, to Canada in 1702; is back again, and in Ireland, at all events, in 1723; and then gets placed in uncomfortable circumstances, and encounters queer adventures. It found its way into the hands of the Rev. John Alexander (John No. 3), in the lifetime of the fifth Earl of Stirling; and on his death, in 1743, it found itself in the hands of his widow, who took it to Birmingham when she went to residethere; whence it was stolen, in 1758, by an emissary of the then claimant of the peerage, William Alexander, who took it off to America, and either suppressed or destroyed it, the latest trace of it existing in 1806 or 1812, when it was presumably destroyed. All this was the original official statement of his case, by the prisoner himself, in 1829, in the process of "proving the tenor."

Thirdly, In 1702, this M. Mallet speaks of the charter as "an ancient one;" whereas it was then only sixty-three years old—its date being 1639.

Fourthly, It having been thus a dead letter for sixty-three years, owing to the altered ownership of the territories included in it—they having become the undisputed property of France, and so continued for half a century afterwards, namely, till General Wolff's conquest of Quebec in 1760; yet we have a forecasting Frenchman, in 1702, represented as calmly speculating, in the year 1702, without anything to suggest such an idea, on the possibility of the territories being reconquered from France by the English, and in that event the charter becoming an object of great interest!

Fifthly, We have him also giving himself very particular concern with

the limitations and family destinations of the tenures of the foreign grantees claiming under this "ancient" dead letter—then a mere useless piece of parchment, likely to attract the eye and attention of none but some exceedingly inquisitive antiquarian. Who was this M. Mallet? There is no suggestion that he was acquainted with any member of the family, or had ever been concerned in any way with them. Why, then, should he feel it necessary to "take the precaution" of having the copy which he had made "duly attested?" Who, again, was Lacroix? What was there *then* to interest any one in France or America in the fortunes of the noble Scottish family of the Alexanders? Why was it to be expected that "all the world would read with interest" the note which M. Mallet had so quietly written on his map, and then committed to his bureau?

Sixthly, In 1702, 1706, and 1707, Acadia was in the hands of the French, and consequently its archives or registers were under their control; and a copy of any instrument deposited there could be easily obtained. Why, then, was not the command of Louis XV. obeyed, and a copy procured for his Majesty? Again, what became of the solemnly-attested copy spoken of by M. Mallet, Lacroix, and St Estienne? No account whatever is given of it, nor any reason why it was necessary to set such store by a brief epitome of one or two of the clauses to be found in that copy! Why, therefore, was the "Note" of M. Mallet so "precious," when those interested in the matter to which it related could have so easily seen the original of which it spoke, and obtained a *verbatim* copy of the whole? The "Note" of M. Mallet might, indeed, be precious in the eyes of his suddenly-be-reaved survivors, as an autograph memento of their deceased friend, but not otherwise.

Seventhly, Why should there be, in 1707, in the family of John of Antrim, a tradition, and that, too, an "ancient" one—i. e., forty or fifty

years old—concerning the loss of the record of a copy of the charter, *when the original* was in existence in the archives of Acadia?

Lastly, Why is the great shade of the author of "Telemachus" evoked? Simply to "*authenticate*" the letter of John Alexander to the Marchioness de Lambert, to whom that letter was then on its way!—This much for the intrinsic indication of genuineness or spuriousness, afforded by the indorsements on the map of Canada, which we have hitherto been considering.

We have now, however, to record as remarkable an incident as ever occurred in the course of a judicial inquiry.—As already stated, one of the two documents *pasted* on the back of the map, was the alleged tombstone inscription. As the map was lying on the table of the densely crowded court, owing to either the heat, or some other cause, one of the corners of the paper on which the inscription was written, curled up a little—just far enough to disclose some writing underneath it, on the back of the map. On the attention of the Solicitor-General being directed to the circumstance, he immediately applied to the court for its permission to Mr Lizars, the eminent engraver, then present, to detach from the map the paper on which the tombstone inscription was written. Having been duly sworn, he withdrew for that purpose, and soon afterwards returned, having executed his mission very skilfully, without injury to either paper. That on which the inscription was written, proved to be itself a portion of another copy of the map of Canada, and the writing *which it covered* was as follows, but in French:—

"There has just been shown to me a letter of *Fénélon* written in 1698, having reference to this grandson of Lord Stirling, who was in France during that year, and with regard to whom he expresses himself as follows:—'I request that you will see this amiable and good Irishman, Mr John Alexander, whose acquaintance I made some years ago. He is a man of real merit, and whom every one sees with

pleasure *at court*, and in the best circles of the capital.' These were the initials, as far as they are legible, 'E. Sh.'" This was represented by the Solicitor-General as palpably an inchoate abortive forgery; and Lord Meadowbank pointed out to the jury the evident and partially successful effort which had been made to *tear off* that portion of the surface of the map on which the above had been written. That effort failing, said he, "the only precaution that remained, to prevent its appearing, was to cover it over; for which purpose the parties used the inscription. But then the apprehension of its appearing, if the map were held between the light and the eye, seems to have come across the minds of the parties engaged in the operation, and hence, with a very singular degree of foresight, expertness, and precaution, they used for their cover that by which the eye of the inquirer might be misled in his investigation; for you have seen that the lines and words of the map forming the *back* of the inscription were exactly such as would naturally fall in with those on the *front* of the map of Canada, from which the extract from the pretended letter of Fénélon had refused to be separated. Accordingly the invention, it would appear, had proved hitherto most successful: for though this map had been examined over and over again by persons of the first skill and talent, and scrutinised with the most minute attention, the writing which was thus covered up escaped detection, till, by the extreme heat of the court-house yesterday, or some other cause of a similar nature, a corner of the inscription separated from the map, and revealed to our observation that which was hidden below. Gentlemen, it is for you to consider the *effect* of this revelation; but I must fairly tell you, that, in the whole course of my experience, I have never seen more clear and satisfactory evidence than has hereby been unexpectedly afforded, of the progress of a palpable and impudent forgery." The reader will bear in mind these observations, against

the time when we apprise him of the finding of the jury. The reason suggested by Lord Meadowbank for the abandonment and concealment of the sub-inscription was, that it was of such a nature as could not acquire credit from any one, as Fénélon was therein made to speak as if he were a courtier, familiar with the gay scenes of the court and the capital; whereas it was notorious that he lived more at his diocese than at Paris. Mr Lizars stated that this newly discovered writing did not resemble that of the letter signed "John Alexander." "How the crown counsel would have chuckled," said the prisoner's counsel to the jury, "if the marvellous new discovery had resembled that of Mallet or Alexander!" And that was his only remark on the subject. To us the handwriting of these three manuscripts appears certainly different: all those on the map, indeed, appear different; but an obvious suggestion occurs, that, if they were really forgeries, those perpetrating them may have taken the precaution of employing distinct writers.—Let us now come to the *extrinsic* evidence, to determine the genuineness or spuriousness of these multifarious writings. First, as to the ink and character of the writings. Two eminent French witnesses (MM. Teulet, joint-secretary of the archives of the kingdom of France, and Jacobs, geographical engraver attached to the Institute of France at Paris), peculiarly conversant with the art of making *fac-similes* of ancient writings, solemnly and confidently pronounced their opinions that all the documents on the back of the map were false; that they were written with ink generally used for that purpose—viz., a composition of China ink, yellow and carmine, or red; and the paper afforded visible indications of little red splashings, or spottings, the result of accidents in using that composition.

"Q.—M. Teulet, from what you know, are you of opinion that these writings on the back of the map are authentic writings of the dates they bear?

"A.—I have considered them; and say, on my conscience, that all the writings on the back of that map are false."

"Q.—To M. Jacobs.—Forming a judgment from the ink alone, and the appearance of the writing itself, is it your opinion that these are genuine or false documents—documents of the dates they bear?

"A.—I should think them false."

Mr Lizars also stated that "there was a very great resemblance between the ink in the writing signed 'Ph. Mallet' and the letter signed 'John Alexander,' and it was 'like common water paint.'" He said that "if he were to make any conjecture, it would be that the ink was composed of sepia and amber." But on being asked—"Suppose the ink were made of a mixture of China ink, yellow and carmine, might the carmine come out at the edge?" He answered—"It would be sure to do it: a bungler only would use such a mixture, as the carmine would certainly precipitate: it were much better to use sepia and amber." This gentleman also stated that he had compared the writings on the back of the map with those of the prisoner and Mademoiselle le Normand, but found no resemblance between them. He also stated, that he thought the writings in question *genuine*, and written in a natural, not a feigned hand.

We come now, however, to an astounding fact, rendering all such speculations and surmises superfluous. It will have been observed that all the writings on the back of the map, by Mallet, Estienne, John Alexander, Bishop Flechier, and Archbishop Fénélon, bore date in the years 1706 and 1707; that of Mallet only being in the former year. What will the reader say on being told that it was proved beyond all possible doubt at the trial, that *the map on which these various indorsements were written, was positively not in existence till eleven years afterwards—viz., 1718; and, moreover, that Bishop Flechier had died in 1711, and Archbishop Fenelon in 1715?* Proof so complete and crush-

tic proofs of the profound erudition of the S. Guillaume de l'Isle, of the *Royal Academy of Sciences*, in the great number of geographical works which he has executed for his Majesty's use, and which have been received with general approbation by the public, his Majesty, by the advice," &c. &c., "wishing to attach him more particularly to his Majesty's service by a title of honour, which may procure him at the same time the means of continuing works of such usefulness, has declared, and declares, wishes, and enjoins, that the said S. de l'Isle be henceforward [*DORESNAVANT*] his first geographer," &c. &c. This appointment was signed by the king, and countersigned by the secretary of state. It was distinctly sworn by M. Teulet and M. Jacobs, than whom there could not have been higher authorities on such a subject, that they had carefully examined the map in question—and that, till the 24th August 1718, there never was a map of De l'Isle thrown off having on its face the title of "Premier Géographe du Roi;" but that, after that date, this designation was invariably added to his name;—and though the period of printing was later than 1718, it was necessary to retain the original date of the map, 1703, in order to secure the copyright; because the privilege of printing it, as recited on the map, extended to only twenty years from the time of the map being originally published. Thus was clearly and most satisfactorily explained the erasure of the word "Géographe" after the name of Guillaume de l'Isle, and the contemporaneous interpolation of the new title of dignity—*Premier Géographe du Roi*—between the next line and the one following. All the three witnesses (MM. Teulet, Jacobs, and Mr Lizars) swore, and gave conclusive reasons for doing so, that the same copperplate was used in making the engravings—that De l'Isle was in the habit of retouching his plates, and making alterations in them from time to time; and great numbers of his plates were produced, showing that, in the maps dated anterior to 1718,

the words "*Premier Géographe du Roi*" were interpolated; and in the one before the court, the interpolated line was much "fresher" than the rest of the inscription. In those subsequent to 1718 there was "no such interpolation, the words being always regular with the other part of the title." In addition to this, it was proved, that the word "Géographe" had been mechanically effaced from the copper; for, on carefully examining the under side of the copper, there were "evident traces of hammering, which had been done to fill up the spaces where the words had been effaced."

Nothing could be more lucid and decisive than the evidence given by the eminent M. Teulet on these points; the result being a downright demonstration, as far as the nature of the case admitted of demonstration, that the copy of the map in question could not have been, and was not, in existence, till after the 24th August 1718. The prisoner's counsel, fearfully pressed by these considerations, frankly—but necessarily—admitted, that "if the map were not in existence till 1718, the writings on it purporting to be dated prior to 1718 were forgeries." But he contended, that, though "he should be ashamed to deny that there were strong reasons for supposing the fact to be so, there was not conclusive evidence that the copy of the map in question was not in existence till 1718; for the Crown had not proved a search of the Records of France prior to 1718, and it might be, that the commission which had been proved, was not the first in favour of De l'Isle—there might have been a previous one." "But this," said Lord Meadowbank, unanswerably, "was a strange supposition, refuted by the patent proved before the jury. Had any former grant existed, it must have been there referred to; notice of it could not have been omitted." One other suggestion was offered, faintly, from a sense of its hopelessness; that the alterations on the title of the map might have been effected by the use of double plates; the additional line having been inserted by a second im-

pression on the same sheet of paper. Such a process, however, could not have effaced the word "Géographe," or effected the changes which appeared in the statement of De l'Isle's residence—the words "à l'Aigle d'Or" being manifestly engraven on the site of only partially-obiterated previous letters. That this, in point of fact, had been the process, was distinctly sworn to by those who had seen the original plate. Before quitting this part of the case, we shall quote a critical section of the evidence given by the Crown—that of Pierre François Joseph Leguix, a print and map seller at Paris, whom the prisoner's counsel made a desperate attempt to exclude from the witness-box. He said, "My print-shop is in the Quai Voltaire, Paris. I remember in the winter of 1836-7* a person coming frequently to my shop in search of maps. I think he was an Englishman. The maps he sought for were maps of Canada. He came during the length of five or six weeks. I sold him several maps of Canada. He wished to get one map of a particular date. It was the date of 1703. I sold him a map of 1703. It was procured by me after considerable search. He came to my shop no more after getting that map. It was similar to this [the one in question]. There were no writings then on the back of it. He did not explain who he was, nor say why he wished to have that map. He inquired chiefly for a map of 1703.

"Q. (by the Counsel for the Crown).—'Have you seen the prisoner before?'

"A.—'Yes.'

"Q.—'It was not he?'

"A.—'No, sir.'†

What a moment for the prisoner, whether guilty or innocent!

In a letter written to the prisoner by Mademoiselle le Normand, dated Paris, 8th January 1839, occurs the following passage (read in evidence at the trial), which may possibly relate to the facts above deposed to. "Seulement on a découvert l'homme du Quai; on veut le faire partir pour l'Ecosse; il déclare que voilà 18 mois

il a vendu une Carte du Canada à un Anglais, qui plusieurs fois est venu chez lui, on lui a dit: le reconnaissez-vous? je le crois."

Finally, M. Teulet proved that Fénélon, Archbishop of Cambrai, died at five o'clock in the morning of the 7th February 1715; by the following examined extract from the Register of the Chapter of Cambrai—"Feria 2, die vii Januarii 1715.—Hodie circa quintam matutinam obiit illustrissimus Dominus Franciscus de Salignac de la Mothe Fénélon, Archiepiscopus et Dux Cameracensis, sacri Romani Imperii Princeps, Comes Cameracensis, etc. Requiescat in pace."‡

The death of Flechier, Bishop of Nismes, in 1711, was also proved by M. Teulet, who produced an examined copy of letters-patent for the installation of the successor of Flechier, dated the 26th February 1711; and one of the witnesses, M. de Pages, stated that the Bishop died in the year 1710. Notwithstanding, however, this evidence, M. de Pages (a nephew of the Marquis de Valfour, and attached to the Historical department in the King's Library, and possessing some little familiarity with ancient manuscripts), having brought over some alleged writings of Louis XV. and Flechier, said "that the writing on the map attributed to Louis was exactly like the specimens of his writing which the witness had brought;" and of that attributed to Flechier he observed, "I think it is the same as the writing of his which I produce." On this, one of the judges (Lord Moncrieff) put this acute question:—

"Q.—'If you were assured that that map had no existence till 1718, would you still say that the writing on it was Flechier's?'

"A.—'Wherever it might be placed, I find it conformable to the writing of Flechier.'

"Lord Moncrieff to the Interpreter.—'Remind him that he said that Flechier ceased to be Bishop of Nismes in 1710, and then ask him the question again.' [This was done.]

‡ Ibid, App. lviii.

* Ante, p. 349. † SWINSTON, pp. 143-4.

"A.—'It would be not the less like.'

Lord Meadowbank, it may be observed in passing, regarded the writings brought over by M. de Pages as "important," and handed them to the jury, on their retiring to consider their verdict.

The signatures of Louis, Fénélon, and Flechier were attempted to be proved also by certificates from M. Daunou, M. Villenave, and other eminent French antiquaries; but as they were living, such certificates were of course rejected. If these writings, then, *were* forgeries, they must have been most skilfully executed; and, in fact, the question as to their genuineness or spuriousness excited, as we learn from Mr Swinton, great interest and much discussion in Paris. It may also be here mentioned, as a somewhat singular circumstance, that, a few years previously to this trial, as we also learn from Mr Swinton, a series of portraits and autographs of illustrious Frenchmen, published by Delpech (Quai Voltaire, Paris), contained *fac-similes* of the writing of Louis XV., Fénélon, and Flechier, exactly resembling the writings on the map attributed to them;—and in the specimen given in that work, of the writing of Louis XV., which was taken from the collection of M. Villenave above mentioned, occur the very *two expressions*, and *similarly spelled*, which are found on the map—"les cerconstances presentes"—and "oregenale." Mr Swinton speaks of this coincidence as "remarkable;" but to us it appears not at all so. What is easier than to conceive that, if the writings on the map were forgeries, the fabricator had before him at the time these very fac-similes, and astutely determined to introduce the expressions in question, with the peculiar spelling?

Let us now recur for a moment to the excerpt charter of the 7th February 1639. On the assumption that it was a forgery, *what becomes of the writings on the map of De l'Isle?* They then speak of, they are bottomed on, a document of which there is no earthly

trace whatever, except in a forged extract! If the excerpt be annihilated, so is the charter! And if so,—in the name of holy truth and ordinary common sense, how comes it, but by a double forgery, that we find on the map of De l'Isle, produced for the first time in 1837, *all the essential elements of that charter*, as far as sufficed to further the interests of the prisoner—viz., the altered destination of the titles and property, set forth *verbatim et literatim*, in conformity with the terms of the forged excerpt? "How, but through the evidence of one in the possession of this first forgery of the charter," asked the Solicitor-General,* "could the persons who executed the second arrive at such a close and perfect correspondence with the terms and effect of the former, as has been exhibited through the whole contents of the last?"

The prisoner's counsel said, in defence of this serious section of the charge—the map is not pretended to have been forged; nor is the date "1703" false. Who Ph. Mallet, or Caron St Estienne, was, "at the distance of one hundred and thirty years, no one could tell. Flechier was alive in 1707, and therefore *might* have written the note attributed to him in that year; and so with Fénélon." "Now, gentlemen," said Mr Robertson, "what is the case of the crown on the map? I think it rests entirely on the appointment of De l'Isle as *premier géographe du Roi*," which was unquestionably the true—the inevitable—issue on which to put the case; and he proceeded to contend, on grounds which we have already indicated in passing, that the crown had not established the act of forgery, by clear, irrefragable, irresistible proof.

What, then, says the considerate reader, we ask, as we did in the former instance—were these writings on the map of Canada, any or all of them, genuine or spurious?

III. THE DE PORQUET PACKET. With every disposition to treat this item of evidence with the gravity and impartiality befitting quasi-judicial investi-

* SWINTON, p. 237.

gation, we acknowledge feeling extreme difficulty in doing so. To us, as English lawyers, intense would seem the simplicity of those expecting any rational being to give credit for an instant to the contents of this astonishing packet, as genuine. Two months after the judgment of the Lord Ordinary, pointing out the fatal flaw in the prisoner's pedigree, (viz., the non-proof of two particular steps in that pedigree—that John No. 3 descended from John No. 2, and the latter from No. 1), a sensitive and conscientious thief died—viz., in March 1837—in the exact nick of time, having kept by him till that sad event a packet which he had purloined from his employer in 1798,* *i. e.*, for forty years; and which packet contained four family documents, of vital moment, applying themselves with miraculous exactness to the deficiency in the pedigree aforesaid! We are here stating shortly, but correctly, the effect of a document under this head of the charge, set forth in the indictment. That document we gave *verbatim* in a former part of this paper.† Messrs De Porquet, London booksellers, received a packet by the penny post, on opening which they found one addressed to Lord Stirling, accompanied by a note from a "*Mrs Innes Smyth*" (of whom no one has hitherto seen, heard, or known anything whatever), requesting them to send it to his lordship; whose son happening in the month of April 1837—*i. e.*, a few weeks after the opportune death of the mysterious thief—to call at Messrs De Porquet, they gave him the packet addressed to his father. Instead of forwarding it to him, the young gentleman instantly took it to his solicitors; and after an exciting colloquy as to what this packet might contain (the idea never occurring to him that it would be the proper formal course to send it off to his parent according to its address), it is arranged that they should go on the ensuing morning to a notary public, and open the packet in his presence! This was done; on which they discovered the interesting docu-

* *Ante*, p. 346.

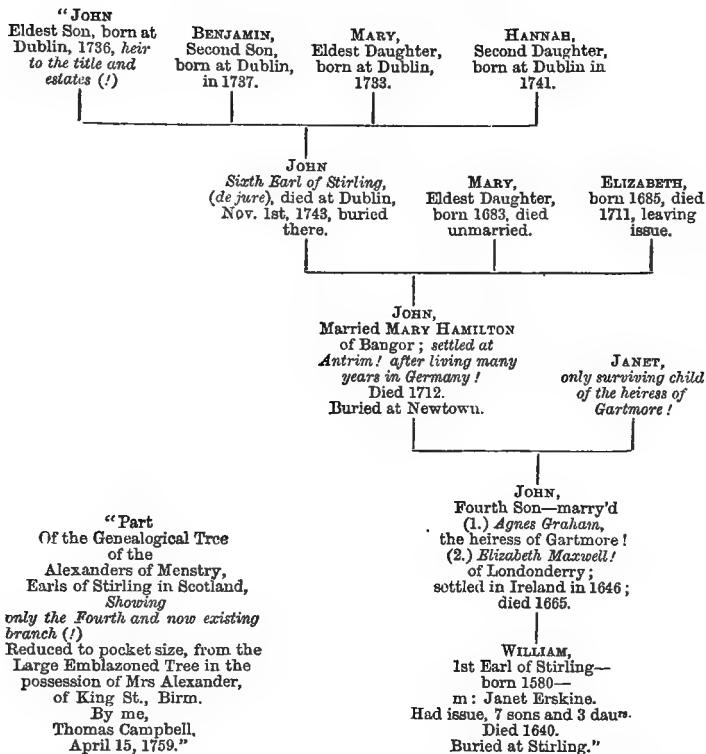
† *Ibid*.

ment above referred to, explaining the theft of the packet which it accompanied, cased in parchment, sealed with three black seals, "evidently," said the young Alexander, in his letter to the prisoner, "my grandfather's seals—not like those *we* have;" and with the following words, also instantly recognised as being in his grandfather's handwriting, on the packet—"Some of my wife's family papers"—that wife being the prisoner's mother, Hannah, daughter of John No. 3 (the Rev. John Alexander), the "person of such great humility, and so perfectly unostentatious," according to her daughter's statement,‡ "that she did not take upon herself the title of countess, though she often told her children that they had noble blood in their veins; that she had two brothers, '*John*,' and '*Benjamin*,' who had fully intended assuming their peerage honours, but for their premature death, *unmarried*, whereby she," the lady aforesaid, "believed herself the last of the family of Alexander who were entitled to be Earls of Stirling!" The sheet of paper accompanying this mystic parchment packet had a black border, "owing to the death of the thief!"—who "had never dared to break the seals," the threefold seals of the packet, "which accounts for the admirable state of preservation" in which the contents were after this forty years' interval!§ This inner packet the modest notary felt to be of too solemn a character to be opened in his presence; and recommended its being taken for that purpose to a functionary of commensurate solemnity—to wit, a proctor.¶ This was done; and they were closeted with the proctor five hours; and in his presence—and that "of four witnesses"—the young gentleman ventured to cut the parchment over the middle black seal—and there appeared four enclosures which completely settled the business in favour of the claimant of the Stirling peerage. Never was anything so beautiful in aptitude. *First*, was a genealogical tree—thus

‡ *Ante*, p. 346.

§ *Ibid*. pp. 347-8.

¶ SWILTON, p. 263.



Secondly, came a letter from the above-mentioned “Benjamin” to the above-mentioned “John,” his elder brother (John No. 3), speaking of the tombstone, and giving many interesting particulars concerning *John of Antrim*—his portrait, his education at Londonderry under his maternal grandsire, Maxwell! his travels abroad, and “visiting foreign courts,” (as indeed Fénélon would seem to have testified, as well as the aforesaid John himself, on Madlle. le Normand’s map). Thirdly, a letter to the same “John” (No. 3) from a certain “A. E. Baillie,” certifying as to the missing tombstone, who had written the inscription given at length in Madlle. le Normand’s map, and assuring “John No. 3” that

the writer had “always heard that *your great-grandfather, the Hon. Mr Alexander* (who was known in the county as *Mr Alexander of Gartmore*), died at Derry, but ‘the Papists of the north’ had unfortunately destroyed the parish registers.” Lastly, “a beautiful miniature painting of *John of Antrim!*”

Such were the contents of the De Porquet packet; and we must here add, that the superscription on the parchment, “Some of my wife’s family papers,” was clearly proved to be really the handwriting of the prisoner’s father.

The Solicitor-General, partly from the intrinsic preposterous absurdity of this whole transaction, and partly

from his extended and able analysis of the two former heads of evidence, dealt rather summarily with the De Porquet packet. "This packet, too," he observed, "was received through the post-office. We have not, therefore, had the same means of tracing these documents as we possessed in regard to the map." * His commentary, however, though brief, was cutting, particularly on the "absurd solemnity" of the "opening" of the packet by the prisoner's son, the "death of the thief in the very nick of time," and the mysterious unknown "Mrs Innes Smyth." "I admit," said he, "that there is no *direct* evidence as to these English documents. But it must be taken into account how closely the whole case is here riveted and dovetailed together; so that I think the documents produced are all parts and portions of the grand machinery of forgery which has been set agoing here, to meet the effect of the Lord Ordinary's interlocutor setting aside the panel's title." †

The prisoner's counsel dealt still more briefly with this part of the case. The little that he did say, however, was excellently said. He dwelt on the proof that the superscription, "Some of my wife's family papers," ‡ had been proved to be genuine. "Yet a verdict of forgery is demanded on that paper, and all the documents contained in that parcel are said to be forged—the one, because we have proved it to be genuine; the others, because the crown has proved—nothing at all. That is the plain English of it, gentlemen, and I leave it in your hands." §

Lord Meadowbank dealt with this portion of the case at considerably greater length, and very carefully. He remarked on the absurd improbability of so notable a discovery being made at the precise moment of difficulty, and in the manner alleged, by the son of the prisoner—a packet full of most critical documents, sent anony-

mously—exactly as in the case of the Le Normand packet, in both respects—the one in April, the other in July next, after the Lord Ordinary's judgment had indicated the *hiatus* in the proof which these two windfalls *exactly filled up*. The two letters enclosed in it—viz., from Benjamin Alexander to his brother John (No. 3), and from "A. E. Baillie" to the same person—Lord Meadowbank regarded as "deserving the most serious consideration of the jury, not so much for the sake of the letters themselves, as from being a part of that great mass of evidence which bore upon the whole question of the authenticity of these various productions." ¶ He remarked strongly on young Alexander's letter announcing to his father the discovery of the packet—his going to a notary and proctor to have it opened, instead of at once sending it on to his father. "For aught his son is supposed to have known, or could possibly tell, it was strictly confidential to his father, and he had no right to make any conjectures as to the contents of it. Did you ever hear a more extraordinary story than he tells? I leave it to you to consider whether such a proceeding can be accounted for on any rational principle. Did you ever hear of such a thing as this being done before? For my own part, the proceeding is altogether incomprehensible upon any supposition but one—and that is, upon the notion *that the contents of the packet were not unknown to some of the performers in the drama, before ever it [the packet] entered the shop of De Porquet.*" Lord Meadowbank laid great stress on the following certainly significant passage in this letter, relating to the "*inscription*" mentioned in the two letters of "Benjamin Alexander" and "A. E. Baillie:"—"You will see that the inscription is *now made a good document, being confirmed* by the letters of B. Alexander and A. E. Baillie. The cause is enrolled to be heard on the 31st day of May." The son was writing on the 23d April. "The better to appreciate this letter," continued Lord Meadowbank, "let me recall your

* SWINTON, p. 263.

† Ibid. p. 265.

‡ This superscription was charged in the indictment as a forgery.

§ SWINTON, pp. 293, 294.

¶ SWINTON, p. 324.

recollection to the map of Canada. You have thus three letters, and that inscription confirming *another inscription* (as stated in young Alexander's letter) *fixed on the map*; and if you do not hold the map or the papers upon it to be genuine, you will consider how the two sets of papers are affected by each other—the one produced at the same moment to confirm that which had been produced before." As for the superscription, "Some of my wife's family papers," the "writing on the cover," said Lord Meadowbank, "may be genuine, while the documents said to be contained in it may be forged; original enclosures may have been withdrawn, and others substituted."—"If you have arrived at the conclusion that the documents at the back of the old map are forgeries (and how you are to do otherwise it is difficult for me to imagine), I think you will not find it very easy to disconnect this reference to the inscription, and to the alleged genealogy of the persons with whom it was the object of the prisoner to connect himself, from these documents, or to entertain any reasonable doubt that both are *pari casu*—were fabricated with the view of bolstering up one another, and must be alike liable to the imputation of forgery: both sets of documents were exactly calculated for making up those defects in the chain of evidence pointed out by the Lord Ordinary. I shall conclude what I have to say upon this matter with an observation which will have occurred to yourselves—that if you hold the *excerpt charter* a forgery, and that the documents written and pasted upon the back of the map are forgeries, it will be difficult for you not to hold that this must affect in a most material degree the evidence relating to the *other* documents, which the public prosecutor avers to be also forgeries. In other words, if you are satisfied that the proof is clear that *any* of these sets of documents are forged, but that the evidence with respect to others is not so conclusive, you will have to make up your minds whether, considering that the whole are so connect-

ed with and bear upon each other, there can be any good reason for fixing a character upon the one which must not also belong to the other."

We have been thus particular in laying before the reader the observations of Lord Meadowbank on this last portion of the case, chiefly because of the result at which the jury arrived. It seems to us not a little singular that one material enclosure in the De Porquet packet escaped the notice of both the counsel for the crown and the prisoner, and also the judge: we allude to the Genealogical Tree, professed to be certified by "Thos. Campbell, 15th April 1759," and forming one of the charges in the indictment. If this be really a forgery, it seems one of extraordinary impudence.

Again, then, as in the two former instances, we ask the reader, weighing well the evidence, and particularly the above observations upon it of Lord Meadowbank, to say *Ay* or *No* to the question, Were the documents contained in the De Porquet packet genuine or spurious? Bearing in mind that all three were the contributions of anonymous informants—the excerpt charter, sent to Mr Banks by—he knew not whom; the Le Normand papers, by—an exceedingly mysterious and exalted personage; and the De Porquet packet, by—a third mysterious unknown: the first sent to the confidential agent of the prisoner in Ireland; the second to one of his oldest and most confidential friends at Paris; the third to his bookseller in London. It may also be worth mentioning that neither Mr Banks, nor Mademoiselle le Normand, nor either of the prisoner's sons, nor his sister, "Lady Eliza Pountney," was called as a witness by the prisoner, nor by the crown.

There remains to be determined, however, a question of infinite moment to the prisoner—whether, in the event of the foregoing documents, or any of them, being pronounced forgeries, he was guilty of having either forged them, or used and uttered any of them, knowing them to have been forged? "This," said Lord Meadow-

bank, with an air of deepening solemnity, "is the heaviest part of the charge against the panel; and I assure you, gentlemen, that, in the whole course of my life, I never addressed a jury with greater anxiety than I do at present."

Let us pause, however, for a moment, to see how this grave question was respectively dealt with by the counsel for the crown, and for the prisoner.

I. The Solicitor-General, it will be observed, according to the Scottish mode of criminal procedure, had only one opportunity of addressing the jury—and that after the whole evidence on both sides had been laid before them, and immediately *before* the speech by the prisoner's counsel. In England, the counsel for the crown speaks also only once, but that before the evidence has been adduced, unless the prisoner call evidence—in which event the counsel for the crown "has the last word," as it is called, "to the jury." This difference may perhaps account for the earnestness with which the Solicitor-General, in the case before us, appears to have "pressed for a conviction"—such is the phrase used on such occasions in England. We are bound, however, to say that, in our opinion, the Solicitor-General did not exhibit any undue or unseemly eagerness; nor approach even towards unfairness, or exaggeration, misrepresentation, or suppression.—The prisoner, said he, is at all events, *de facto*, the utterer of these various documents, and the presumption is always against the utterer—especially when, as in the present case, these documents were calculated to advance his own direct personal interest exclusively. The *onus* lay on him to prove that he innocently uttered, having been deceived by others. Could the jury, in the face of such a marvellous coincidence of times, of means, of objects, believe that a number of different persons were concerned in promoting the prisoner's objects and interests, and he all the while profoundly ignorant of what was being done? The documents are all proved forgeries; and these he

utters, and for the advancement of his own interests alone! In the agony of his difficulty—the crisis of his fate—he goes to France clandestinely, and is proved to have been in constant intercourse with Mademoiselle le Normand, and to have incurred immense pecuniary liabilities to her at that very period; giving, however, a most contradictory account of his relations and transactions with her! Up to the hour of his trial, he had given no explanation whatever of his doings at Paris, whither he went immediately after Lord Cockburn's adverse judgment, and returned so shortly after the discovery of the Le Normand and the De Porquet packets! And Leguix is found selling a map of Canada, of 1703, exactly at the time of the prisoner's being at Paris; and Mademoiselle le Normand writes to him—"They have found the man on the quay!"

II. The prisoner's counsel made an ingenious, eloquent, and judicious address—very brief, and directed vigorously and steadily towards the strong parts of the defence, leaving untouched the formidable points arising out of the prisoner's correspondence with Mademoiselle le Normand, and the conflicting accounts of his movements and transactions given in his judicial examinations. All the forgeries, said he, are charged on, or supposed to be, the act of *one man*—the prisoner; yet not only does no single witness trace the faintest resemblance, in any of the alleged forgeries, to the handwriting of the prisoner, or Mademoiselle le Normand, but an able witness for the crown, Mr Lizars, negatives such a fact. Well might the prisoner be deceived, if the documents *were* forgeries, when his counsel, his agents, the Lord-Advocate, and the Judge Ordinary, every one concerned during the ten years' litigation, were so deceived, and never once suspected it. Why did not the crown produce Mademoiselle le Normand? And as to the purchase of the old map of Canada from Leguix, on the Quai Voltaire, he explicitly stated that the prisoner was *not* the man! But there

was no evidence of the forgery, and therefore the guilty knowledge, using, and uttering, fell to the ground. If even there were doubts on the subject, the prisoner was clearly entitled to the benefit of them: his character "was everything;" for he had received as high as man could give. In an early part of his address, Mr Robertson averred that he saw in the countenances of the jury "the cheering light of an acquittal—so that he could almost stop *there*;" and his last sentence was one which would be deemed highly objectionable on the part of counsel, under such circumstances, in England—"On my conscience I believe him innocent of the crimes here charged, and to have been merely the dupe of the designing, and the prey of the unworthy!"* So solemn an expression of belief could not, of course, have been made by a gentleman if he were not sincere; but it is certainly not a part of the duty of counsel to make such protestations; and in doing so he trespasses beyond his province upon that of others, and that one the confines of which ought to be most jealously and sacredly guarded—we mean the province of the witness, and that of the jury. Bating a little wilful blindness to ugly facts, which is occasionally to be found elsewhere than in Scotland, the address of Mr Robertson was as fair as can be expected from a prisoner's advocate, and calculated to make a strong impression upon the jury.

III. Lord Meadowbank's summing-up was long and elaborate; stern and uncompromising from first to last, in the expression of a hostile view of the whole case, as against the prisoner, but still not, in our judgment, straining the proved facts. It is the charge of an upright yet severe judge, not ambitious of replying to the prisoner's counsel, but vigorously expressing his own conscientious opinions.

It is evident that Lord Meadowbank regarded the advantage derived by the prisoner from the presence in the dock of his distinguished friend

* SWINTON, pp. 333-4.

Colonel D'Aguiar, and also from the flattering testimony to character which he had received, as likely to prove a disturbing force to the jury in forming their estimate of the case. He therefore, in the first instance, addressed himself with an evident air of anxiety to this section of the evidence. "That of Colonel D'Aguiar," said he, "of the gallant officer now seated with the panel at the bar,† was not more creditable to the panel than it was to the witness. It proved that his feelings of obligation, long ago conferred, had not been obliterated by the lapse of time; and it was given with an earnestness which, if it told on your minds as it did on mine, must have been by you felt as most deeply affecting. * * * But in weighing this evidence to the character of the prisoner, you must attend to what that proof really amounts to."‡ He proceeded to point out the chasm of thirty years in their *personal* intercourse; and then exhibited, in lively colours, by way of set-off, the conduct of the prisoner in raising large sums of money on false representations as to his resources—"raising a sum of £13,000 on bonds granted by him for £50,000. All this, gentlemen, is, to say the least of it, a most discreditable proceeding on the part of a person bearing the high character which has been given the prisoner. It is for you, gentlemen, to consider if the evidence which has been given as to the character he once bore, be or be not counterbalanced by these disreputable proceedings at a later period."§

The "evidence of the prisoner having uttered the whole of the instruments and documents charged in the indictment to be forgeries, has not been called in question by the prisoner's counsel, he not having said one word on the subject. For my own part, I see no ground for disputing that the whole were uttered by the prisoner, and I shall content myself

† Such a thing would not be allowed in England, except, probably, under very special circumstances. We never witnessed anything of the kind.

‡ SWINTON, pp. 333-4.

§ Ibid. 335-6.

with referring to the evidence of the official witnesses, who received them from the agents of the prisoner; who again, in so producing, and so delivering them, acted under his authority, and were the mere instruments for carrying into effect those acts for which he alone can be responsible." Shortly afterwards, Lord Meadowbank gave a blighting summary of undisputed facts.

On the 10th December 1836, the Lord Ordinary issued his note, pointing out the evidence that was deficient: "The prisoner admits that he left the country immediately afterwards, and went to Paris. Where he went to then, he does not tell; under what name he went, he does not tell; where he got his passport has not been discovered, because he concealed the name under which he travelled. He continued in Paris till the ensuing August, when he returned, as he says, to Scotland, to be present at the peers' election, and there he voted. He then despatched his son to Paris, and he returned with the map (which you are now, in considering the case in this view, to assume to be a fabrication) in the month of October, having all these documents written or pasted upon it." Lord Meadowbank proceeded to point out a circumstance "of the last importance to this branch of the case," which "had been lost sight of by the prisoner's counsel, and had not attracted the attention of the counsel for the crown." And certainly the judge was right. This was the "circumstance" in question. One of the documents pasted on the back of the map was a portion of the envelope in which the supposed letter of John of Antrim (John No. 2) had been enclosed; and on this envelope was the impression of a seal. Now, in the prisoner's judicial examination before the Lord Ordinary (the step admitted by Mr Swinton to have been "unusual"), he was shown the parchment packet contained in the De Porquet packet, indorsed, "Some of my wife's family papers;" and the seal attached "was an impression of his grandfather's seal (John No. 3); he

had not seen that seal later than the year 1825; it is in the possession of my sister, Lady Elizabeth Pountney." The judge then pointed out to the jury a fact which he had himself discovered, that the impression of the seal on this packet and that on the envelope on the map were identical—a fact, indeed, which the prisoner himself had admitted in another part of his examination. "Now, gentlemen," continued Lord Meadowbank, "supposing there was not another tittle of evidence in the case to connect the prisoner with these proceedings, see what this amounts to. You find a link in his pedigree wanting in December 1836. Immediately after this has been pointed out, he is in Paris, and stays there till August. During this short interval he is brought into immediate and close connection with this mass of fabrications, of fabrications of no earthly use or moment to any human being but himself, and having among them the impression of that seal which he admits to be in the possession of his own sister. Gentlemen, suppose that the name of Mademoiselle le Normand had never been heard of in this case, I leave it to you to consider, whether the irresistible inference be not, that that seal could have been appended only by the person in possession of it, and, at least, that that person was within his own domestic circle!"

Next followed some weighty remarks on the evidence of Leguix as to the purchase by an Englishman, in the winter of 1836-7, of the map of Canada of 1703; and then Lord Meadowbank pointed out certainly a serious contradiction in the prisoner's statements, under his different "examinations," as to the period of his becoming acquainted with Lord Cockburn's judgment of December 1836. When first examined, on the 18th December 1838, in answer to the direct question when he first knew of that judgment, he declared that "it was not till the month of March or April following [i. e., 1837], that he was made acquainted with that or any part of his lordship's judgment

or proceedings, *except as to their general import*, which he had learned from a letter addressed to him by his own family." Then he was asked whether he had not been made acquainted with Lord Cockburn's judgment in the same month of December in which it was pronounced. He declared "that *he had not*, and even *then* [*i. e.*, 18th December 1838], he knew nothing of the particulars of that judgment. On the 14th February 1839, however, on being again examined before the sheriff, he declared that, when in Paris, in March or April 1837, he heard that Lord Cockburn had pronounced an unfavourable judgment in his case; and *at that time a copy of the printed papers of the judgment and of the note* was sent him by his family from Edinburgh, and until that time he was not aware that Lord Cockburn had formed an unfavourable opinion of his case!" "Here are declarations of the prisoner, contradictory on matters as to which there could be no error in point of recollection,—an important contradiction, and one testifying a desire of concealment of the truth, which, in all cases like this, has ever been deemed greatly to affect the innocence or guilt of a party." Again, "if these declarations establish the prisoner's knowledge of what had been done by Lord Cockburn, you are bound to consider whether that knowledge does not materially affect the evidence of the fabrication of these documents, as having been known to him, to whom alone they could be useful."

Then Lord Meadowbank came to the prisoner's visits to Mademoiselle le Normand—his having trafficked with her as far back as 1812, since which time he said "she had been in the constant habit of advancing money to himself and his wife;" and yet her existence, even, was not known to his most intimate friends! Then he admits that he and his wife "desire her to institute a search for documents and charters to support his claims;" that he had never dreamed of searching *in France* for documents illustrative of his own pedigree; and it was

with the greatest surprise he afterwards learned that they had been discovered! Then Lord Meadowbank contrasted the prisoner's statements as to the paucity of his visits to this old lady with the evidence of one Beaubis, the porter at the hotel where she resided, and who stated that the prisoner "*saw her every night*." Infinitely more serious, however, were the conflicting answers given by the prisoner as to the nature and amount of his pecuniary liabilities to Mademoiselle le Normand, which Lord Meadowbank pronounced to be "a mass of contradictions." At one time he stated that he had given her his bond for *four hundred thousand francs*!—then only two bonds for 100,000 francs each, sent by him to her in 1837!—"payable, palpably, on the event of his succeeding in his claims on the Earldom of Stirling. This," continued Lord Meadowbank, "perhaps affords a pretty good key for solving the mystery of the interest that this woman has taken in these productions!" Having adverted to various portions of this old lady's correspondence with the prisoner, which had been seized at his house—certainly containing matters pregnant with violent suspicion—Lord Meadowbank said, "These are the circumstances from which you are to infer, or not, the guilty knowledge of the panel, and of his being, or not, art and part in the forgery of these documents. Remember, it is not said or proved that he forged them with his own hand; the question is, whether he had a knowledge of the forgeries that were going on at Paris during his stay there. * * * You will judge whether his obligation to Mademoiselle le Normand for 400,000 or 200,000 francs was or was not given for the fabrication of that document. And in looking to that document itself [*i. e.*, the map with its indorsements], you will see his statement as to *the seal* on the back of it; and consider whether he be not thereby brought into immediate contact with the fabrication of that document, in consequence of the impression of the seal on its back,

which he admits was in the possession of a member of his family." Lord Meadowbank proceeded to advert briefly to "the exculpatory evidence," and said that the fact of the fabricated excerpt charter having escaped the notice of the Lord Ordinary, and also of Mr Lockhart, was "no doubt a strong circumstance in favour of the prisoner," if that excerpt had been *the only* case against him; but it was altogether a different matter when regard was had to the great number of other documents alleged to have been forged, or knowingly uttered as forged, by the prisoner. "Gentlemen," said Lord Meadowbank, "the prisoner may have been a dupe in all these transactions; but you have it clearly made out that the only person who enjoyed the fruits of the imposition was the prisoner himself! Gentlemen, I have now laid before you the whole case as it occurs to me. I have never bestowed more pains upon any case than I have upon this; and in none have I ever summed up the evidence with greater pain. Our business is to do justice, and you, in particular, have to weigh the evidence calmly and deliberately; and, should you doubt of that evidence being sufficient to bring the present charge home to the prisoner, to give him the full benefit of that doubt.* But, to entitle you to do so, these doubts must be well considered, and the circumstances on which they are founded, deliberately weighed. To doubts that are not reasonable, you have no right whatever to yield. You are not entitled to require from the prosecutor

* "Giving the prisoner the benefit of a doubt," is a common judicial expression, but not a happy or exact one. A prisoner has a right to insist on a case being so clearly proved against him, as to exclude all reasonable doubt; and if the evidence do not come up to that point, then he has a right to require the jury to *hold the case unproved*. In Scotland, the verdict "*Not Proven*" exactly meets the case of defective proof. In such a case, the only verdict which an English jury can pronounce is, *Not Guilty*—i. e., they can "*not*" say that, "*according to the evidence,*" the prisoner is "*Guilty*." It will be well to have in mind these observations in considering the verdict pronounced in the case now under the reader's consideration.

direct proof of the facts laid in his charge. The circumstances laid in evidence must be put together; and it is your duty, then, to consider what is the reasonable inference to be drawn from the whole of them: in short, whether it be possible to explain them upon grounds consistent with the innocence of the party accused; or whether, on the contrary, they do not necessarily lead to a result directly the reverse."

The jury, thus charged with their solemn responsibility, withdrew to consider their verdict; and as they were absent for FIVE HOURS, we have time to ask the reader what would have been *his* decision, as one of that jury, on this remarkable case?

First, Were any, or all, of these documents forgeries?

Secondly, If they were, did the prisoner forge them?

Thirdly, If forgeries, though not by the prisoner, did he use and utter them with a guilty knowledge of their being forgeries?

As a specimen of the impassioned style in which Scottish counsel can address the jury on behalf of a prisoner, we present the reader with Mr (now Lord) Robertson's peroration, as subsequently revised by himself.

"Gentlemen, in a case of doubtful evidence, which this is, character is everything. You have heard the character given of my client, at both the beginning and end of his career. And you have seen it—a moral spectacle unexampled in the annals of a court of justice—in the conduct of the gallant officer who now sits beside him, and whom I should be proud to call *my friend*. You heard, gentlemen, yesterday, the testimony given by that gallant officer, in strains of manly eloquence, in behalf of the associate of his boyhood, and the correspondent of his riper years. With the spirit of a British officer, and the pride and generosity of a British gentleman—not like the cold world turning his back upon his friend in the day of his perplexity and distress, but recollecting what had passed betwixt them in early youth, and seeing with interest

the rising friendship of their children—he thought of nothing but how he could comfort him in his hour of danger. He saw his frail bark tossed among the breakers; he rushed to its succour, and he will bring it in safety to the desired haven. The contemplation of that spectacle, gentlemen, was a requital to me for all my anxieties here, and must have been equally gratifying to you; and the embrace which these two men shall have, when this trial is over, and they quit that bar together, as I feel they shall, is a pleasure that I envy that gallant officer more than all the treasures of wealth, or the laurel that adorns his brow. Gentlemen, do not think of the character of the panel as a light thing. I fully anticipate his acquittal at your hands, from this heavy charge, as being as certain as that I am now addressing you. When I look back on the life of this unfortunate man, I see nothing but anxious days of heart-sickening hope, and sleepless nights of feverish rest, disturbed and chequered by golden dreams that were speedily dissipated by the rays of the morning sun—a rising family, taught to look on nobility and wealth as their birthright, yet seeing nothing but penury and distress before them—calling to their parent for bread, and lo, he has nothing to give them but a stone—

‘Lo ! Poverty to fill the band
That numbs the soul with icy hand,
And slow consuming age.’

And when I look forward to the future, I trust I see a prospect that his mind shall be directed to pursuits more solid, and to the attainment of objects more consolatory and enduring. Let the visionary coronet be plucked from his bewildered brow—let the prospects of wealth and of courtly titles and honours vanish into air; but, oh, gentlemen, leave him that best and highest title of nobility—his good name; let his character remain to solace him on retiring from the fatigues and bustle of this vain and transitory world. Gentlemen, I am one of those who venerate the memory of the illustrious dead—of those whose prejudices, feel-

ings, and principles, unite in admiration of hereditary rank and high title, conferred as the reward of patriotism and virtue upon those whose names adorn the page of history, and who are enrolled amidst the nobles of the land: and I also venerate those of more recent name, who, from their valour, their piety, or their learning, have been added to grace that august assembly. But without truth, integrity, and honour, titles and distinctions are worse than nothing. Without these, the glitter of the coronet hath no splendour in my eye—the rustling of the silken robe hath no music in my ear. On the tarnished ermine I trample with contempt. Do not, gentlemen, add to the pangs of this man more than he deserves. Leave him in possession of that character which he has hitherto enjoyed, as his only solace under his heavy trials. Leave him that, without which the crown itself is but a bauble, and the sceptre a toy; for, *in my conscience I believe him innocent of the crimes here charged*, and to have been merely the dupe of the designing, and the prey of the unworthy.”

That Mr Robertson made the assertion printed in italics truly, cannot be doubted; but, in doing so, as we have already stated, he far exceeded his duty as an advocate, as that duty is understood in England, though there have been exceptions. At best, with an intelligent jury, such asseverations are rejected as worthless, coming as they do from one whose judgment is so biassed and warped; and we should lament to see the practice prevail, for it is a highly reprehensible and mischievous one. The judge, in the case before us, made no observation, however, on the matter; and there we shall leave it.

His charge, of which we have already given a summary, occupies fifty-four pages of the Report. It commenced by anxiously calling the attention of the jury to “the real merits of the case which they had been empaneled to try. * * * The thing *you* have to do with,” said he, “is the

charge against the panel of the forgery of one particular document" [*i. e.*, the alleged excerpt charter of Charles I. in 1639], "and of others of a minor description, alleged to have been fabricated by him, or by others with his knowledge; and all of which he is charged with having uttered, knowing them to be forged." Lord Meadowbank's commentary may be characterised as lucid, elaborate, and crushing. His own view of the case glares through every sentence, most ominously for the prisoner; and perhaps may be regarded as a little too much like a reply to the speech of the prisoner's counsel. At the same time, after carefully weighing it, we see nothing seriously to find fault with; for the facts are stated fairly, and the comments on them are such as a judge was entitled to make, for the guidance of the jury. If we were to venture criticism, it would be, that we do not see on the report, corrected by the judge, that clear categorical statement of the questions for the jury, which are usual with the English judges. In England, the jury would probably have been told, at the close of the charge, to consider whether the prisoner forged all, or any, of the instruments charged in the indictment? Or, if not, whether he uttered any of them, knowing them to be forged? The verdict, however, which will be presently seen, showed that the judge and the jury had sufficiently understood each other.

At length, after their long absence from court—a torturing five hours' absence—the return of the jury is announced: the four judges resume their seats with stern gravity and expectation: the agitated prisoner, still accompanied by his chivalrous friend, Colonel D'Aguilar, appears at the bar: the anxious crowd is hushed into silence: and the chancellor (or foreman) delivers in the following verdict:—

I. "The jury UNANIMOUSLY find it proved that the *excerpt charter is a forged document*; and, BY A MAJORITY,*

* In Scotland, the verdict in a criminal case is according to a majority of the jury; in a civil case they must be unanimous.

find it NOT PROVEN that the panel FORGED the said document, or is guilty art or part thereof, or that he UTTERED it, knowing it to be forged."†

II. "UNANIMOUSLY find it proved that the *documents on the map are forged*; and by A MAJORITY find it NOT PROVEN that the panel FORGED the said documents, or is guilty art and part thereof, or that he UTTERED them, knowing them to be forged."

III. "UNANIMOUSLY find it NOT PROVEN that the documents contained in De Porquet's packet are forged; or were uttered by the panel as genuine, knowing them to be forged."

IV. "UNANIMOUSLY find it NOT PROVEN that the copy letter to Le Normand,‡ in the fifth and last charge of the indictment, is either forged, or was uttered by the panel as genuine, knowing it to be forged."

As soon as the chancellor of the jury had finished delivering the above verdict, the prisoner swooned, and was carried out of court insensible. On one of his counsel certifying to the court, on the authority of a medical gentleman in attendance on him, the continued indisposition of the prisoner, and that it would be dangerous to bring him back into court, his further attendance was dispensed with, the Public Prosecutor consenting; and as soon as the verdict had been formally approved of and recorded, the court pronounced the following sentence:—

"The Lords Commissioners of Justiciary, in respect of the foregoing verdict of assize, assoilzie the panel *simpliciter*, and dismiss him from the Bar."

By the law of Scotland, a verdict of "*Not Proven*" has the same effect as a verdict of "*Not Guilty*," with reference to liability to a second or subsequent trial on the same charge.

Thus ended, on Friday the 3d May 1839, this extraordinary trial, than

† Here arose a burst of applause from the audience, in consequence of which the court immediately ordered the gallery to be cleared.

‡ This was the anonymous letter to Madlle. le Normand, dated the 10th July 1837, accompanying the map professed to have been left with her so mysteriously on the ensuing day. See it *in extenso*, *ante*, p. 348-349.

which we know none more so on record.

The jury unanimously find, it will be observed, that the document forming the foundation of the prisoner's claim to the Stirling peerage, *i. e.*, the Excerpt Charter of Charles I., is a forged document. If it be so, there is an end of the prisoner's claims for ever; but we are disposed to think that in point of law it is still open to him to offer that document in evidence, in support of his claims to the peerage, if he should be so advised: in other words, that he is not stopped by the above verdict from doing so. The point of that verdict was, that the prisoner was not proved guilty of forging, or uttering the Excerpt Charter, knowing it to have been forged; and their adding that the document was forged, has no legal effect, as a finding. It is only the statement, by the jury, of their opinion—one of the premises from which they had deduced their inference. If fresh evidence of genuineness could be adduced, it would be admissible; and even as to such evidence as was offered in the Scottish court, another tribunal might be conceived, perhaps, capable of coming to a different conclusion as to the validity of the alleged charter. It appears to us, however, that this is hopeless—for in all our experience we never saw an instrument so annihilated by evidence of spuriousness.

The same observations are applicable to the second class of instruments—the documents on the map. With the other two, *viz.*, the documents in the De Porquet packet, and the letter to Le Normand, the jury deal differently; unanimously finding them not proven to have been forged. This also is a matter of mere gratuitous statement on the part of the jury; no more establishing the validity of these latter, than their other statement legally impugned that of the former. —If all or any of these instruments be really forged, it could not have been by any one possessing any knowledge of the law of evidence, or in the least degree acquainted with the innum-

able liabilities to detection afforded by even the most cunning of their contrivances. The prisoner was, by a majority of his jury, as to two of the charges, and unanimously as to the other two, relieved by the verdict of not proven from the heavy criminal liability which it had been sought to attach to him. There seems to have been no suggestion on the part of the prosecution that the prisoner's own hand forged a single letter of any of the instruments which the jury believed forged. Practically, the one great question in the case on the evidence really was—did the prisoner utter any of the instruments, knowing them to have been forged? Of that question the jury were the sole judges; and it may be, that after lengthened deliberation, and much difference of opinion, as indicated by the verdict, they adopted the suggestion of his eloquent counsel, that the prisoner “had been merely the dupe of the designing, and the prey of the unworthy.” By this we conceive to be meant, that, believing himself to be entitled to the earldom, in his eagerness to establish his rights, he might have innocently held out such splendid expectations to those who assisted him, as induced them to resort to forgery. This, if true, is based on a low estimate of his understanding; but it is that proposed by his own eloquent and zealous counsel. As far as the evidence goes, we ourselves entertain not a shadow of doubt that every one of the instruments mentioned in the indictment is spurious, but leave the reader to draw his own conclusion as to whether the prisoner was wholly innocent, or wholly guilty, of forging, or uttering, all, or any, of the instruments in question, knowing them to have been forged. The prisoner is in the meanwhile entitled to the full benefit of the verdict of *Not Proven*, as to every part of the charge.

We have bestowed no small pains on presenting a faithful and clear statement of this extraordinary case, on account of its great public importance and interest; and because it affords an excellent exercise for the young

student in jurisprudence. In conclusion, we have to express our obligations to the learned and accomplished reporter of the case, Professor Swinton, for the fullness and fidelity with which he appears to have placed it before us. The *fac-similes* of all the documents greatly add to the value of the report; and we advise both English and Scotch law students to expend a few shillings in the purchase of that report.

NOTE.

In the Obituary of the *Times* of Monday the 13th November 1854, appeared the following, while these sheets were passing through the press:—

“On the 30th September, at Greenwich, in the 90th year of his age, THOMAS CHRISTOPHER BANKS, BARONET OF NOVA SCOTIA, and Knight of the Holy Order of St John of Jerusalem, LAW GENEALOGIST, and ANTIQUARIAN.

MODERN STATE TRIALS.*

No. IV.

DUELLING: AND, "WHAT'S IN A NAME?"

Is, or is not, a trial in this country for DUELLING, to be regarded as a Farce, following a Tragedy? There are those who say that it is; but we are not of the number. Such trials often greatly excite the public mind, and array opinions and prejudices against each other, in such a manner as to disturb and derange the judgment. Then more or less is expected from the law, and its administration, than is right. If the heated public should have prepared itself for a conviction, loud and violent is its reclamation against an acquittal; especially if it have been brought about by what are styled technical objections, and *vice versa*. They forget, under the impetuous impulses of a sense of rough natural justice, that settled rules of legal procedure must be observed indifferently on all occasions, if even-handed justice is to be administered in a court of justice. How did these rules come to be settled? They are the results of centuries of experience—of ten thousand observed instances of the advantage, nay, the absolute necessity, for adhering to them. If it could be imagined with any, even the slightest foundation of truth, that those sworn to decide according to the law and the facts had wilfully shut their eyes to the one or the other; or, either directly or indirectly, connived at an evasion of the letter or a violation of the spirit of the law, in order to secure a particular result; then there is certainly no power in language adequate fitly to denounce so deliberate and awful a perjury, so monstrous

an outrage on the administration of justice.

Bonâ fide duels are always lamentable affairs, happen under whatever circumstances they may: especially when attended by loss of life, or serious personal injury—occurring, too, in a highly civilised and Christian country like ours. They properly arouse the grief and indignation of every thoughtful and virtuous member of the community; whom, however, they also satisfy as to the great practical difficulty of dealing with such cases. While the law of the land is clear on the subject as the sun at noonday, alike unquestionable and unquestioned, there yet exist, in almost every detected duel, far greater difficulties than are suspected by the public, in bringing to justice the guilty actors. First of all, it must be borne in mind how deep an interest they have in cutting off all means of future evidence, by intrusting a knowledge of the affair to the fewest persons necessary for carrying it out, and by selecting scenes remote from observation. Then, again, let it be remembered that both principals and seconds, and all others present aiding and abetting, have incurred heavy criminal liability; are liable to be indicted for murder, as principals or accessaries; and, consequently, none of them can be compelled to furnish any evidence which may even tend to criminate himself. This great rule of criminal law has doubtless operated as an indirect encouragement to duelling; but how is this difficulty to be en-

* *Blackwood's Magazine*, December 1850.

countered? Must the rule be "abrogated?"

Assuming, however, the existence of evidence, and that it is satisfactorily adduced before the jury, it then becomes the duty of the judge and the jury to act in accordance with their oaths: the former to lay down the law distinctly and unequivocally; the latter to find their verdict conscientiously according to the principles of law so laid down, as applicable to the proved facts of the case. If a conviction ensue, the judge must then pronounce the sentence of the law; when it depends upon the discretion and firmness of the executive whether that sentence shall be carried into effect. Take the case of a fatal duel, conducted with unimpeachable "fairness," as far as concerns the practice of duelling—and that the prisoner had received cruel provocation from his deceased opponent, who had obstinately refused retraction or apology. What is to be the decision of the executive? What will be its moral effect, as an encouragement or discouragement of duelling? Will it operate as a tacit recognition, to any extent, of the practice of duelling, as at all events a necessary evil, and denuded of moral turpitude? These are questions by no means of easy solution.

In the present constitution of society in this country, a Christian community, duelling is a practice environed with difficulties, whichever way it may be approached by its most discreet and resolute opponents. We must deal with men and things as they are, at the same time that we would make them what we think they ought to be. How many professing Christians, men of otherwise pure and virtuous lives, have gone out deliberately to take the life of an opponent, or expose or sacrifice their own; solely, it may be, from a puerile notion that their *honour* required the committing of the crime! "It is not one of the least evils of this system," it has been well observed, "that the word *honour*, which, rightly understood, denotes all that is truly noble and virtuous, should be prostituted as a

pretext for gratifying the most malignant of human passions, or as a cover for that moral cowardice—the fear of being thought afraid." This is one of the chiefest roots of the poisonous tree: and can human laws kill it? We think they can. If the legislature were really intent upon annihilating duelling, its members would long ago have acted on the suggestion of Addison—that, "if every one who fought a duel were to stand in the pillory, it would quickly diminish the number of these imaginary men of honour, and put an end to so absurd a practice." If men will fight for a little stake, let them be made into little men, by enduring a degrading punishment; if for a great stake, that is to say, the gratification of malignant passions, let them be treated as great criminals, and die the felon's death, or live his life. Let justice be really blind in all such cases, her sword descending upon noble and ignoble of station alike.

We acknowledge that there is one aspect of the practice of duelling, which somewhat perplexes the moralist: for it cannot be denied or doubted, that duelling operates as a great preventive check to ruffian insolence and violence—as a potent auxiliary in preserving the necessary restraints and the courtesies of society. "It must be admitted," says Robertson, "that to this absurd custom we must ascribe, in some degree, the extraordinary gentleness and complaisance of modern manners, and that respectful attention of one man to another, which at present renders the social intercourse of life far more agreeable and decent than among the most civilised nations of antiquity." How many a viper-tongued slanderer's lips have been sealed by the dread of a bullet! How many an insolent inclination to personal violence has been checked—how many a truculent heart has sickened before the prospect of a "leadene breakfast!" Take a single case, which is really embarrassing to the candid opponent of duelling—an insult offered, by either words or deeds, to the character or person of a lady whom

one is bound to protect—an injury beyond all legal cognisance, and perpetrated by one occupying the station of a gentleman. To one who does not bow under the paramount influence of religion, the harassing question occurs, What is to be done? Cases may be easily imagined in which it would be idle to say, "treat the offence and the offender with contempt—leave them to the contempt of society; where such a course would only add to the poignancy of the wrong or insult, and invite aggravation and repetition. Let the outraged lady be imagined one's own wife, or daughter, or sister! "Is the wrong to be perpetrated with impunity?" asks the upholder of duelling. "What would you do?" retorts his opponent; "will you deliberately take the life of the offender, and give him an opportunity of taking yours?" Is that your notion of *punishment* or *satisfaction*? What will be the effect of an example such as this upon society at large? Is every one to be at liberty to do the like? thus deliberately to ignore the law of God and of man?"

Duelling is, in truth, generally the resource of the weak-minded, the vain, the vindictive, or the cowardly; and it is not right to ask society to be liberal in its allowances for the wrongdoings of its less worthy members. There are, nevertheless, cases in which persons have found themselves involved in duels, under circumstances pregnant with extenuation in the eyes of even the hardest moralist; and such as warrant the executive, when the majesty of the law has been vindicated,

* In one of Dr Johnson's various conversations with Boswell and others, on the subject of duelling, he said, "A man is sufficiently punished [for an injury] by being called out, and subjected to the risk that is in a duel. But," continues Boswell, "on my suggesting that the *injured person* is equally subjected to risk, he fairly owned he could not explain the rationality of duelling." It will be remembered that, in previous conversations, the doctor had endeavoured to do so, by various unsatisfactory and sophistical reasons; and one of his arguments, recorded by Boswell, was quoted by the counsel of Mr Stuart, when tried for having shot in a duel Sir Alexander Boswell, the eldest son of Boswell!

and its authority recognised, in mitigating or remitting the punishment due to an acknowledged violation of the law.

The law of the land is better able to vindicate really outraged character and honour than may be imagined by many foolish hot-blooded persons, who give or accept "hostile messages." It is armed with ample powers of compensation and punishment, as may be easily ascertained by those who can satisfy it that they have been the victims of deliberate and wanton insult and injury. Little more than a year ago, one gentleman thought proper to write to some naval and military friends of another, most offensive imputations upon his honour. When apprised of this, he instantly wrote to demand that his traducer should either prove the truth of his assertions, or unequivocally retract and apologise for them. Both alternatives were contemptuously refused, on which the injured party brought an action for libel against his traducer; who, unable to justify, and unwilling to apologise, allowed the case to go before a jury. On their learning the true nature of the affair, and being reminded by counsel, that they were appealed to as a jury of twelve gentlemen, to vindicate the honour of an unoffending gentleman, they gave such heavy damages (£500) as soon brought his infuriate opponent to his senses, and elicited an unequivocal retraction, and as ample an apology as could have been desired. A few instances of this kind would soon satisfy the most sceptical of the potency of the law in cases too often deemed beyond its reach, and of the effective reality of its redress in cases of wounded honour. Who could lightly esteem being solemnly and publicly branded, by its *fiat*, as a liar and a slanderer—its blighting sentence remaining permanently on record? He who would regard such a circumstance with indifference surely is not worth shooting, or running the risk of being shot by, or of being hanged or transported for shooting or attempting to shoot! If a person of distinguished station or

character receive an insult or an injury of such a nature, as not to admit of being treated with silent contempt, it becomes his duty to society to set an example of magnanimous reliance on the protection of the laws of his country, and reverence for the laws of God. Against one thing, however, every one should be constantly on his guard—the entertaining and cherishing that false overweening estimate of personal dignity and importance, which predisposes too many to take offence, and then hurry to revenge it!

According to the law of England, as already stated, a death caused by duelling, though in the “fairest” possible manner, is clearly murder, to all intents and purposes whatsoever. In the year 1846, the majority of the Criminal Law Commissioners suggested a change in this law, recommending that, where two persons agree to fight, and a contest ensues, and one of them is killed, the homicide should be extenuated. The reasons on which this suggestion was founded appear to us of a very unsatisfactory nature; and one of the Commissioners, the late Mr Starkie, altogether dissented from the views of his brethren, embodying his reasons in an able and convincing protest or counter-statement. “Whilst,” he observes, at its close, “as it seems to me, little good could be expected from the proposed alteration, it might be productive of much harm in a moral point of view. It would be understood to manifest an alteration in the opinion of the Legislature as to the heinousness of the crime of homicide, and of course tend to diminish the efficacy of the law against it.” We entirely concur in the following remarks of Mr Townsend, in one of the best expressed passages in his book:*

“Founded on the law of God, the law of the land should remain clear and stringent, that whoever kills in a deliberate duel, commits murder. The sanctity of human life would be impaired, were this denunciation lessened, and the forfeit, for expediency’s sake, commuted. The very good to

be obtained by the compromise with ‘codes of honour’ would be temporary; for arguments of hardship, as the consequences of conviction, and appeals to compassion against a *gentleman* being adjudged guilty of felony, and transported, it might be for life, would equally tickle the ears of credulous jurors, and be listened to with as much avidity as the present topic of capital punishment. Let the law maintain its own independent straightforward path, *irretortis oculis*, and, be the fluctuations in fashionable feeling what they may, continue, in its austere regard for life, unchanged and unchangeable.”†

Thus stands the matter. The Legislature, therefore, not having ventured to interfere with the law, which must be administered with rigorous faithfulness, by those to whom that severe and responsible duty has been intrusted, God forbid that there should ever be coquetting with an oath on these occasions!

We have no hesitation in saying that our English Judges, as far as our experience and inquiries have gone, invariably lay down the law, in these cases, with clearness and unflinching firmness. The only approach towards a departure from this rule of right, is one which we trust has no other foundation than an erroneous report of what fell from Baron Hotham at Maidstone, in the year 1794, in trying a Mr Purefoy, who shot his late commanding officer, Colonel Roper. That judge, according to Mr Townsend,‡ who also intimates a hope that the judge has been incorrectly reported, concluded his summing-up, which produced, as might have been expected, an instant acquittal, by the following extraordinary passage:—

“It is now a painful duty which jointly belongs to us; it is mine to lay down the law, and yours to apply it to the facts before you. The oath by which I am bound obliges me to say that homicide, after a due interval left for consideration, amounts to murder. The laws of England, in their utmost lenity and allowance for

* *Modern State Trials.*

† TOWNSEND, i. 170-1.

‡ *Ibid.*, 154-5.

human frailty, extend their compassion only to sudden and momentary frays; and then, if the blood has not had time to cool, or the reason to return, the result is termed manslaughter. Such is the law of the land, which, undoubtedly, the unfortunate gentleman at the bar has violated, *though he has acted in conformity to the laws of honour*. His whole demeanour in the duel, according to the witness whom you are most to believe, Colonel Stanwix, was *that of perfect honour and perfect humanity*. Such is the law, and such are the facts. *If you cannot reconcile the latter to your consciences, you must return a verdict of guilty*. But if the contrary, *though the acquittal may trench on the rigid rules of the law, yet the verdict will be lovely in the sight both of God and man*."

If Baron Hotham really uttered this language, he was totally unfit to administer justice, and should have been removed from the Bench. Mr Townsend, in one place, observes that Baron Hotham "must have allowed his kindly feelings to master his judgment;" and in another, cites the case as "a very famous (!) one, being the first of those occasions on which judges admitted, from the bench, the necessity and expediency of juries tempering the law, where, by a stern necessity, they have held themselves bound by it;" that is, in plain English, where judges advised juries to violate their oaths, in order to defeat the just administration of the law. We know no parallel to this "famous" case, except that of Justice Fletcher, a judge in Ireland, in the year 1812; who, as we learn from Mr Phillips' interesting "Memoirs of Curran," thus addressed an Irish jury, in a trial for murder occasioned in a duel: "Gentlemen, it is my business to lay down the law to you, and I shall do so. Where two people go out to fight a duel, and one of them falls, the law says it is murder. And I tell you, by law it is murder; but, at the same time, a fairer *duel I never heard of in the whole course [sic] of my life!*" The prisoners were, of course, immediately acquitted.

Mr Townsend states, that "the long

series of judicial annals has not been darkened by a single conviction for murder, in the case of a duel fairly fought."* If this be a correct statement, which we greatly doubt, it argues either a signal deficiency of evidence in every case, or a perverse disregard of duty by either judges or juries, or both. We repeat it, and do so, anxiously desirous of giving every degree of publicity in our power to the fact, that our judges discharge their duties on these occasions with unwavering firmness. We shall give two or three modern and interesting instances.

The late eminent Mr Justice Buller tried a clergyman, the Reverend Ben-net Allen,† and his second, for killing a Mr Dulany, in a duel, fought at ten o'clock at night, in Hyde Park, at the distance of eight yards: the reverend duellest had actually put on his spectacles, in order to see his man! Mr Justice Buller told the jury that "they were bound to adhere to the law, as to which there never," he continued, "has been a doubt. In the case of a deliberate duel, if one person be killed, it is murder in the person killing him. Of that proposition of law, there is not, there never has been, the smallest doubt. Sitting here, it is my duty to tell you what the law is, which I have done in explicit terms; and we must not suffer it to be frittered away by any false or fantastical notions of honour." Here the judge did his duty: but the jury seem, according to Mr Townsend, who doubtless spoke after having duly examined the facts of the case, "to have temporised between their consciences and wishes, by acquitting the second, and finding the principal guilty of manslaughter."

Mr Justice Patteson, in trying the seconds for murder, in the case of the fatal duel between Dr Hennis and Sir John Jeffcott, who shot the former, thus plainly put the matter to the jury: "Whether duelling ought to be tolerated in this land, I say nothing. It is no question for any jury at all. The law of the land does not tolerate

* TOWNSEND, i. 152.

† Ibid. i. 162.

it. I repeat that, if you are satisfied on this evidence, that the three gentlemen went out to Haddon, knowing that Sir John Jeffcott and Dr Hennis were about to fight a duel there, without heat or irritation, but deliberately aiding and assisting the affair, on a point of honour, after vainly endeavouring to effect an amicable arrangement, I cannot tell you, in point of law, that it is anything short of murder." The jury at once acquitted the prisoners! *

In the year 1838, a young man named Mirfin was shot in a duel at Wimbledon, by a young man named Elliott, twenty-five years of age, under deplorable and aggravated circumstances. The former had been a linen-draper! in Tottenham Court Road; and, together with the latter, seemed to have led the dissolute life, for some time, of men about town. The duel arose out of a quarrel which had occurred in a certain scene of nightly infamy near Piccadilly! Two young men named Young and Webber, respectively only twenty-four and twenty-six years of age, were tried for the wilful murder of Mirfin. They had not acted as seconds of the survivor, but had accompanied him and his second to the scene of action. The chief witness was a surgeon, who detailed with a deadly simplicity and matter-of-fact air, the whole particulars of the duel, at which he was present; and produced such an effect on the jury that, on delivering their verdict, they expressed the "horror" with which they had heard his evidence and regarded his conduct, and their regret that he had not himself been put upon his trial for murder. The reader shall have an opportunity of judging for himself on the subject, from a portion of the evidence given by this person.†

"After the pistols were loaded, Mr Elliott and Mr Mirfin were placed on their ground, and a pistol was delivered to each. I then went and stood seven or eight paces from them, with the

two seconds. I looked at the principals. The word to fire was given by Mr Elliott's second: he said, 'Gentlemen, are you ready?—Stop!' That was the agreed signal for firing: they were to fire instantly on the last word 'stop' being uttered, and not before. They fired together immediately on the signal. After they had fired, I observed that *the ball had passed through the crown of Mr Mirfin's hat*: I saw something fly up in the air: I saw a portion of the crown just raised at the moment. As soon as they had fired, the seconds interfered. I and they were standing together. They moved towards the principals, who remained in their places. Some conversation took place between the principals and seconds, and then between the seconds themselves—which lasted for a few minutes only. Mr Mirfin insisted on a second shot. He spoke loud enough for all present to hear. I stood within seven or eight paces of him, and could hear every word he said. I was intent looking at his hat—I saw the ball had passed through it. I could hear that the conversation was with a view to reconcile the parties; but Mr Mirfin would not hear of any reconciliation. I believe Mr Elliott would have made a verbal apology; but Mr Mirfin would accept nothing but a written apology, and insisted on a second shot. After he had made this statement, another pistol was delivered to each. They next left their ground. I told Mr Mirfin that his hat had been shot through, and he took it off and looked at it, and said nothing, but replaced it on his head. The second pistols were Mr Mirfin's, and were fired at a signal exactly similar to the former one. Mr Elliott fired first, but not till after the signal had been given. I distinctly heard the sound of his pistol, immediately after the word had been given; and Mr Mirfin's shot was fired almost immediately. I think his pistol was discharged after he had received the fatal shot. I think he felt the wound previous to his firing off his pistol. He did not sufficiently raise his hand. His ball struck the ground. He was

* TOWNSEND, vol. i. p. 163.

† Regina v. Young. 8 Carrington and Payne, 644.

in the act of bringing his pistol to the level, when he fired. After both shots had been fired, I looked at each of the men, and did not, at first, perceive that either was injured. Mr Mirfin walked towards me about six paces, I think, with his left hand on his right side, and I think also, the pistol still in his right hand. I think he gave it to me. He advanced towards me, saying, 'I am wounded.' I asked him where; he looked towards the wound and raised his fingers, showing me where he was wounded, but without speaking. I said, 'I am exceedingly sorry to hear it: good-by! God bless you!' He replied, '*Good-by, old fellow!*' I then assisted him to lie on the grass. He did not fall immediately. I undid his pea-jacket and waistcoat, and pulled up his shirt, and probed the wound. The other persons were standing by. Mr Mirfin's second walked up, and asked if the wound were fatal. I said it was a very fatal wound. Mr Elliott and his second said nothing, merely looking on. Mr Broughton asked me again, after I had probed the wound, whether it was fatal. I said it was. He asked, 'What shall we do?' I replied, 'The sooner you leave the ground the better, and I will wait.' They all three left the ground together. Mr Mirfin died within ten minutes. I did not speak to him after this. I saw I could be of no service to him, and did not wish to fatigue him by saying anything to him. I examined the body after I had got it home, and discovered a small wound not quite the size of a (bird's?) egg, between the fifth and sixth ribs."

We have given these details in all their sickening simplicity and utter hideousness, because they are worth a world of comment on the nature and tendency of Affairs of Honour.

The trial came on before the late Baron Vaughan, and the present Baron Alderson, at the Old Bailey, on the 22d Sept. 1838; and the former thus laid down the law to the jury: "When, upon a previous arrangement, and after there has been time for the blood to cool, two persons meet with deadly weapons, and one of them

is killed, he who occasions the death is guilty of murder: and the seconds are also equally guilty. The question then is, did the prisoners give their aid and assistance by their countenance and encouragement of the principals, in this contest? Though neither of the prisoners acted as second, still, if either sustained the principal by his advice or his presence—or, if you think he went down for the purpose of encouraging and forwarding the unlawful conflict, although he did not say or do anything, yet if he were present, and was assisting and encouraging at the moment when the pistol was fired, he will be guilty of the offence of wilful murder. Questions have arisen as to how far the second of a party killed in a duel is liable to an indictment for the murder of the deceased: I am clearly of opinion that he is."

The prisoners were convicted; but under the special circumstances of the case—for there existed, in the evidence, considerable doubt as to the part taken in the murderous affair by the prisoners, or even whether they, in fact, took *any* part in it—sentence of death was not passed, but only ordered to be recorded against them; and they were afterwards sentenced to a lengthened term of imprisonment. Mr Townsend does not seem to have been aware of this case, as he makes no allusion to it.

We ourselves were present at a remarkable trial for duelling, twenty-four years ago,* at the Old Bailey, before the late excellent and very learned Justice Bayley, on which occasion he also laid down the rule of law respecting duelling, with uncompromising firmness and straightforwardness. This was the case of a militia officer, who had shot, in a duel in France, a young officer in the army; and a clergyman, the brother of the deceased, made strenuous and persevering efforts to bring the survivor to trial. The latter continued, for some time after the duel, in France; and possibly under the impression, then a natural one, that he could not be tried

* On Saturday the 9th October 1830.

in this country for a duel fought in a foreign country not under the British crown, he came to England; where he was instantly arrested, under Stat. 9 Geo. IV. c. 31, § 7, which had been passed only two or three years previously, viz., in 1828, and might consequently well escape the notice of a non-professional person. That act authorises the trial, in England, under a special Commission, issued under the Great Seal, of any British subject charged with having committed any murder or manslaughter abroad, whether within or without the British dominions, as if such crimes had been committed in England. The prisoner was admitted to bail, to meet the charge, and, having duly surrendered, took his place at the bar of the Old Bailey, at nine o'clock on a Saturday morning.

He was a man apparently approaching middle age, of gentlemanly appearance, his features indicating determination of character; but they wore an expression of manifest anxiety and apprehension as he entered the dock, and, looking down, beheld immediately beneath him, the brother of the man whom he had shot, and through whose ceaseless activity he was then placed on trial for his life as a murderer. He was to be tried, moreover, by an uncompromising judge—stern and exact in administering the law, and animated by pure religious spirit, but, withal, thoroughly humane. Throughout the whole of that agitating day, the prisoner stood firm as a rock, sometimes his arms folded, at others his hands resting on the bar; while his eyes were fixed intently on the judge, the witnesses, or the counsel; every now and then glancing with gloomy inquisitiveness at the jury and the judge. His lips were from first to last firmly compressed. A considerable number of witnesses was called for both the prosecution and the defence; who gave conflicting testimony as to the circumstances under which the parties had fired at each other. The unhappy deceased, a very young man, was shot through the neck, and died, shortly afterwards,

on the ground. The prisoner's witnesses, who had seen the duel, denied that he had fired irregularly. As counsel were not at that time allowed to address the jury for the defence, the prisoner spoke himself at considerable length, alleging himself, and truly, to have been the challenged party, and denying that he had been guilty of any unfairness, or had entertained any ill-will towards the deceased. As the case stood, however, it looked black enough to those who knew the law, and the character of the judge who sat to administer it. That venerable person began his summing-up to the jury about seven o'clock in the evening, and the scene can never be effaced from our memory. The court was extremely crowded; the lights burned brightly, exhibiting anxious faces in every direction: but what a striking figure was the central one—that of the prisoner! Immediately over his head was a mirror, so placed as to reflect his face and figure vividly, especially to the jury. A few moments after the judge had commenced his charge, we observed the Ordinary of Newgate glide into court, the late Rev. Dr Cotton, in full canonicals, and with flowing white hair, having a picturesquely venerable and ominous appearance, and take his seat near to, but a little behind, the judge. It was then usual* for the Ordinary to be present at the close of capital cases, in order to add a solemn "amen" to the prayer with which the sentence of death concluded—that "God would have mercy on the soul" of the condemned. "Gentlemen of the jury," commenced Mr Justice Bayley, amidst profound silence, "we have heard several times during the course of this trial, of the law of honour; but I will now tell you what is the law of the land, which is all that you and I have to do with. It is this: that if two persons go out with deadly weapons, intending to use them against each other, and do use them, and death ensue, that is—murder, wilful murder." He paused for a moment, as if to give the jury

* Such is believed to be still the case.

time to appreciate the dread significance of his opening. As soon as he had uttered the last two words, the prisoner's cheek was instantaneously blanched. We were eyeing him intently at the moment, and shall never forget it. He stood, however, with rigid erectness, gazing apparently with mingled anger and fear at the judge, whom he felt to be uttering his death-warrant; and after a while bent his eyes on the jury, from whom they wandered scarce a moment during that momentous summing-up—one which, with every word, was letting fall around him, as he must have felt, the curtain of death. "The law of honour," said the judge, towards the close of his charge, "is an imposture—a wicked imposture, when set against the law of the land, and the law of God Almighty, claiming the right to take away human life. I tell you, who sit there to discharge a sworn duty, that a fatal duel is malicious homicide—and *that* is wilful murder." The jury retired to consider their verdict; and the judge at the same time quitted the court till his presence should be required again. The prisoner, however, continued standing at the bar almost motionless as a statue. After a considerable absence the jury returned into court. The prisoner eyed them, as one by one they re-entered their box, with a so-

licitude dismal to behold, and the irrepressible quivering of his upper lip indicated mortal agitation. The verdict, however, was—Not Guilty; on which the prisoner heaved a heavy sigh, passing his hand slowly over his damp forehead, bowed slightly, but rather sternly to the jury, and was then removed from the bar, and released from custody.*

It is now, however, time to return to Mr Townsend's volumes, where we find two trials for duelling. One is that of the late Mr Stuart, who killed Sir Alexander Boswell, in Scotland, on the 26th March 1822, in a duel conducted with undisputed regularity and fairness. The other is that of the Earl of Cardigan, who fought and wounded Captain Harvey Tuckett, but not mortally, in a duel, on the 12th September 1840. This trial is one of remarkable interest, in every point of view; and we shall take some pains in bringing it distinctly and intelligibly before our readers.

About five o'clock on the afternoon of Saturday, the 12th September 1840, a person named Daun, a miller, together with his wife and son, observed from the stage of their mill, on Wimbledon Common, two carriages approaching it from opposite directions, and at once suspected what was about to take place. Two gentlemen first quitted the carriages,

* Owing to the length of time which had elapsed since this case was tried, nearly a quarter of a century, the author trusting solely to memory, erroneously stated certain incidents to have been supposed to attend the duel, which led the survivor to challenge the correctness of the statements in a court of law. At the suggestion of the court, who stated that the article in question was evidently written with a high moral object, and that there was no pretence for imputing more than *bonâ fide* mistake, the matter at once terminated by an ample apology.

The decision of the court on that occasion, and the interesting and important point of law submitted to it, has been much canvassed; and, it is said, has been disapproved of by very high authority. The question was, whether an action for damages can be maintained by the survivor, in a fatal duel, against any one who, in giving an account of the duel, alleges it to have been supposed accompanied by circumstances at variance with the ordinary notions of fairness or honour on such occasions? It was argued

for the defendant, "that the libel resolved itself into a charge of murder;—that there are no degrees of murder;—that there is no such thing known to law as a '*fair*' murder; and that there can be no such distinction as a '*fair*' or a '*foul*' duel, when it ends fatally." It was also contended, that no action for libel lies for anything written against a person touching his conduct in an illegal transaction, according to the cases of *Yrisarri v. Clement*, 3 Bing. Cas. 432, and *Hunt v. Bell*, 1 Bing. 1. The court said, however, "that the libel, in substance, charged that the plaintiff was guilty of murder, under circumstances of grave and malignant aggravation; and the justification states simply, that the plaintiff committed murder, by killing his antagonist in a duel!" "If the libel go further, and state something besides the murder, which is injurious to the plaintiff's character, it is clear upon every principle of the law of libel, that that must be justified as well as the rest, or the defence fails."—*11th Common Bench Reports*, pp. 128, 130.

each with a pistol-case, duly loaded a brace of pistols, and stepped out twelve paces; on which two other gentlemen, the Earl of Cardigan and Captain Tuckett, came up from their respective carriages, and took their stations at the points indicated. To each was given a pistol; the other two persons withdrew to a little distance; the word, to fire, was uttered, and immediately followed by an ineffectual discharge of both pistols. The principals remained at their posts; a second brace of pistols was given them; again both fired, and Captain Tuckett fell, wounded in the small of the back—bleeding profusely, but, as it proved, not from a mortal, or even dangerous wound. Thus the aristocratic affair of *honour* was more fortunate in its issue than that plebeian one in which, two or three years before, the young linen-draper Mirfin had received his mortal "satisfaction." Lord Cardigan's second was Captain Douglas, and Captain Wainwright was that of Captain Tuckett. The whole affair of the duel had been witnessed by the miller, who was also a constable, and his wife and son, standing on the stage of the windmill. The moment that Captain Tuckett fell, the miller and his son quitted their post of observation, ran up to the scene of action, and intimated to all the parties that they must consider themselves in his custody. How much better would it have been if the interference had taken place before the offence had been committed! It was the plain duty of the constable to have hastened to the spot the moment he saw preparations for committing an offence, and so have prevented it. Lord Cardigan still held in his right hand the pistol with which he had fired; and there lay on the ground two pistol-cases, one of them bearing the earl's coronet. Captain Tuckett lay on the ground, his second, Captain Wainwright, kneeling beside him, supporting him; while Sir James Anderson, a surgeon, who had attended them to the field, was examining the wound. One of these three entreated the constable to allow the wounded

gentleman to be removed to his own house, giving a solemn pledge that, on his recovery, he should attend before the magistrate. At the same time one of them took out a card, on which was printed, "Captain Harvey Tuckett, No. 13 Hamilton Place, New Road," and wrote in pencil, on the back of the card, the words, "Captain H. Wainwright." Who gave this card remains, on the evidence, a mystery; nor did it appear whether Lord Cardigan saw the card given, or knew what was printed or written on it, or heard what was said. As almost the whole interest of the trial, and also its unexpected issue, turned upon the identity of the wounded duellist, and the exquisite adroitness and vigilance of the late Sir William Follett, the earl's counsel, in dealing with this card, and the circumstances attending its delivery to the constable, the reader will find his account in noting these circumstances accurately. On the constable's receiving the card, and the pledge above mentioned, he allowed those who had given it to depart. The conduct of the Earl of Cardigan was undoubtedly distinguished throughout by soldierly straightforwardness and frankness. He went direct, with Captain Douglas, to the Wandsworth Police Station, and tapping at the door, the inspector presented himself, and asked what was wanted. "I am a prisoner, I believe," said Lord Cardigan. "Indeed, sir! on what account?" asked the surprised inspector, as Lord Cardigan entered the station-house. "I have been fighting a duel," said his lordship, "and hit my man—but not seriously, I believe—slightly—merely a graze across the back"—drawing his hand across his own back, to indicate the region where he believed his ball had struck Captain Tuckett. Lord Cardigan then turned to Captain Douglas, and said, "This gentleman also is a prisoner—my second, Captain Douglas." He then took several cards out of his right breast-pocket, and handed one of them to the inspector. It bore the words, "The Earl of Cardigan. 11th Dragoons." On reading

the name, the inspector said, "I hope the duel was not with Captain Reynolds?"—alluding to the notorious disputes between his lordship and that officer, and which led to a court-martial on the latter. Lord Cardigan "stood up erect," said the inspector, in giving his evidence, and seemed to reject the notion with the utmost disdain: saying, "Oh no, by no means!—do you suppose I would fight with one of my own officers?"* He duly appeared before the magistrates, and was bound over in heavy recognisances to appear whenever his presence should be required. He did so, from time to time. As soon as Captain Tuckett had sufficiently recovered, he also made his appearance at the police-office, and gave his name. The affair had by this time attracted much public attention, chiefly, there can be little doubt, from the unpopularity of the Earl of Cardigan; the newspapers teeming with accounts of his alleged discourteous and oppressive treatment of the officers under his command. The prosecution of Lord Cardigan was loudly called for; it being alleged that the high rank of the offender imperiously demanded that even-handed justice should be dealt to him. Mr Townsend speaks of this demand for prosecution as "a very pitiful manifestation of popular rancour and spleen."† "As the duel," he adds, "had been fairly fought, and the code of honour satisfied, without loss of life, it seemed strange that the first unsheathing of the statute should be directed against a high-spirited and gallant nobleman, who had been exposed to violent prejudice and popular clamour; and the prosecution seemed justly obnoxious to the sup-

position that it originated in party malevolence, and not in respect to the law." We never shared in the hostility here spoken of as existing towards the gallant nobleman in question. Our political opinions are also his; and we are disposed to believe that he has been the victim of much misrepresentation and injustice. We have always regarded him, moreover, as a first-rate British officer;‡ we desire, nevertheless, to be understood as vindicating the call for judicial inquiry into the transaction to which Lord Cardigan and his opponent, with their seconds, were parties, if that transaction had been of a criminal character. Only three or four years previously, two young men had been tried and convicted of wilful murder, for having only been present at the duel which cost one of the principals (Mirfin) his life. If Captain Tuckett had been killed, Lord Cardigan would clearly have been guilty of wilful murder; that is beyond all question, if the law of England be not a dead letter, and those who affect to set it in motion be not guilty of a mockery of justice. If, therefore, a peer of the realm, a member of the supreme court of judicature in the kingdom, had really been guilty of a conspicuous and grave violation of the law, which all are required to obey with implicit reverence, those who demanded inquiry ought to have been given credit for acting on public grounds. The peer should not escape, where the plebeian would be condemned. Let us see, then, how stood, and how stands the law on this momentous subject—for momentous it is.

In the first place, let it be understood that *the mere challenging*, whether verbally or in writing, to fight a duel, and the mere *carrying* any such challenge, is such a high misdemeanour, punishable by fine and imprisonment, according to the circumstances of the particular case. This offence consists in the provoking or inciting others to commit a breach of the peace; but may also be regarded in a much

† He is now (October 1854) gallantly engaged with our army in the East.

* In opening the case against Lord Cardigan, at the bar of the House of Lords, the Attorney-General (now Lord Campbell), of course speaking from erroneous instructions, imputed to Lord Cardigan the utterance of a most unbecoming and offensive expression,—“Do you think I would condescend to fight with one of my own officers?” We are satisfied that no such language could have fallen from a British officer; and the evidence shows that it did not in point of fact.

† Vol. i. p. 210.

more serious light — namely, as an attempt to commit or provoke others to commit a felony,—the felony of wilful murder. In the present case, a challenge had been sent and accepted: those who had done so, met, and fired deliberately at each other with deadly weapons, at only a few paces' distance. They fired twice; the first time innocuously; the second time, one of them was wounded. Every single step was here highly criminal; the earlier ones as misdemeanours, the later ones as felonies; the last indeed a capital felony, for which, beyond all question, the life of Lord Cardigan had become forfeited to the outraged law of the land. This we will shortly show, for the consolation of all future duellists. By the common law of the land, no personal violence, unattended by death, amounted to more than a misdemeanour. In the year 1722, was passed "the Black Act,"* which, amongst various enactments levelled at the class of offenders who caused the passing of the statute, contains this brief general one: "If any person shall wilfully and maliciously shoot at any person, in any dwelling-house, or other place, he shall be adjudged guilty of felony, and suffer death." This was the first statute which made the mere act of shooting wilfully and maliciously at another, without reference to the result, felony. Subsequent statutes, respectively known as Lord Ellenborough's and Lord Lansdowne's Acts, made it a capital offence to shoot at another with intent to murder, or do grievous bodily harm, provided the death which might be occasioned would amount to murder. Though the matter had never become the subject of judicial decision, it had been suggested by a late eminent writer on the criminal law,† that, where an ineffectual interchange of

* It was called "the Waltham Black Act," as occasioned by the devastations committed near Waltham, in Hampshire, by persons disguised, and with *blackened faces*—"who seem," says Blackstone, "to have resembled the followers of Robert Hood, who in the reign of Richard I. committed such great outrages on the borders of England and Scotland."—4 BLACK. COM. 245.

† The late Mr Chitty.

shots took place in a duel, both parties might be deemed guilty of the offence of maliciously shooting, within one of these acts, passed in the year 1803 (43 Geo. III. c. 58), and the seconds also, as principals in the second degree. In the year 1837, however, was passed the Statute of the 1st Victoria, c. 85, which we advise every intending duellist to consult deliberately, before committing himself to its meshes. It enacts first (§ 2), that "whoever shall wound any person, or by any means whatsoever cause to any person any bodily injury dangerous to life, with intent to commit murder, shall be guilty of felony, and suffer death." Again, secondly (by § 3), "whosoever shall shoot at any person, or, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent to commit the crime of murder, shall, *although no bodily injury be inflicted*, be guilty of FELONY, and liable to be transported for life, or for any term not less than fifteen years, or imprisoned for any term not exceeding three years, at the discretion of the court." Lastly, thirdly (by § 4), "Whoever shall maliciously shoot at any person, or, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or wound any person, with intent to maim, disfigure, or disable, or to do some other grievous bodily harm to such person, shall be guilty of felony, and liable to the same punishment contained in the previous section."

Blackstone, following Hawkins, thus lays down the law in the case of duelling: "Express malice is, where one, with a sedate deliberate mind, and formed design, doth kill another,—which formed design is evidenced by external circumstances, discovering that inward intention,—as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some grievous bodily harm. *This takes in the case of deliberate duelling, where both parties meet avowedly with an intent to murder; thinking it their duty as gentlemen, and claiming it as*

their right, to wanton with their own lives and those of their fellow-creatures, without any warrant or authority from any power either divine or human, but in direct contradiction to the laws of both God and man, and therefore the law has justly fixed the crime and punishment of murder on them, and on their seconds also." * This passage may be said to reflect a somewhat ghastly light on the three sections of the statute law given above, such as must have startled the Earl of Cardigan and his advisers, as soon as they found that he had been made the subject of *bonâ fide* prosecution under that statute. We affirm unhesitatingly, and no lawyer will deny, that the facts relating to the duel, as they appear above stated, brought Lord Cardigan's case within every one of these three sections—as clearly within the first, rendering the offence capital, as within the other two, declaring it felony punishable with transportation. The Attorney-General himself stated to the House of Lords, in opening the case against the prisoner: "The present indictment might have been framed on the capital charge." *A wound had been inflicted*, which constituted one branch of the capital offence: but "the prosecutor had, very properly, restricted the charge to firing with an intent, without alleging that a bodily injury *dangerous to life* had been inflicted." † The indictment was founded on the third and fourth sections alone; charging, in the first count, a shooting with intent to murder; in the second, to maim and disable; in the third, to do some grievous bodily harm. Indictments were preferred before the grand jury, at the Central Criminal Court, against both principals, and both seconds. The grand jury ignored those against Captain Tuckett and his second, but "found" those against Lord Cardigan and his second. As probably the same evidence, precisely, was laid before the grand jury in both cases, it is certainly difficult to account for the totally different results, except on the

* 4 BLACK. Com. 199. † 1 TOWNSEND, 215, 216.

supposition that the grand jury suffered themselves to be influenced by feelings of commiseration for the party who had been wounded by one who had escaped unhurt. Lord Cardigan was reputed to be "a dead shot," and was certainly very unpopular; but there was no pretence whatever for saying that he had acted otherwise than with rigorous fairness in his encounter with Captain Tuckett, who, for all the grand jury could tell, was as "dead a shot" as the Earl. We would, however, fain hope that this secret-sworn inquest were not obnoxious to the censures which Mr Townsend ‡ and others have levelled at them in this matter. On the bill being found, Lord Cardigan, of course, claimed his right to be tried by his peers—(i. e., *pares æquales*)—a right which he possessed in common with every fellow-subject; and the indictment was removed by *certiorari*, to be tried before the House of Peers in full Parliament.

The court of the Lord High Steward of Great Britain is one instituted for the trial of a peer indicted for treason, or felony, or misprison of either; § but when the trial takes place during the session of Parliament, as was the case on the present occasion, it is before the High Court of Parliament. A Lord High Steward is appointed in either case; but in the latter he officiates, not as the supreme judge in matters of law, as he would be in a trial during the recess, but as speaker, or chairman, having an equal voice with his brother peers, in matters of both law and fact.

This was the first time that duelling had been made the subject of prosecution under the statutes against shooting with intent to kill, maim, disable, or do grievous bodily harm; and the position of the Earl of Cardigan had suddenly become perilous in the extreme, and doubtless occasioned the gravest apprehensions to himself and his advisers. If his case should be

‡ 1 TOWNSEND, p. 210.

§ For misdemeanour, a peer has no such privilege, but must be tried by a jury.

held to fall within the statute in question, not only was he liable to transportation for life,—and he knew that the House of Peers would firmly do its duty, especially conscious as it was that upon it were fixed the eyes of the whole country,—but what would be the effect of a *conviction of felony* on his property? Four days after the trial, it was stated in the *Times* newspaper,* and has not been, as far as we know, contradicted, that “such had been the doubts as to the issue of the trial, entertained by Lord Cardigan and his legal advisers, that his lordship, to prevent the whole of his property being forfeited to the crown, executed, some time before, a deed of gift, assigning over the whole of his valuable possessions to Viscount Curzon, the eldest son of Earl Howe, who had married a sister of the Earl of Cardigan. It is stated that the legal expenses of this transfer of property, arising from fines on copyholds and the enormous stamp-duties, amounted to about £10,000; and as the deed of transfer was said to have been enrolled in due form, in the event of an acquittal the immense expenditure would have to be again incurred, in order to effect a re-transfer.” So serious a matter, even in a pecuniary point of view, has now become the fighting a duel, to a nobleman or gentleman of fortune; who are recommended, consequently, not to fight in a hurry—at all events, till they shall have had an opportunity of taking the best advice of counsel learned in the law, as to all the liabilities and incidents which they are about to encounter. The deed of transfer in question, if executed at all, had probably been executed before it was known to Lord Cardigan and his advisers, that it was not intended to indict him for a capital offence, under the second section of stat. 1 Vict. c. 85, and that he could not, consequently, be attainted. Even, however, as the case stood, if he had been convicted of the felony with which he was charged, the validity of his expensive attempt to obviate the legal effect of that conviction upon his large

property would have been gravely questionable, had the law advisers of the crown felt it their duty to impugn the transaction.

The House of Lords presented, on the morning of Tuesday the 16th February 1841, an imposing appearance. Lord Denman, the Chief-Justice of the Queen's Bench, had been appointed, by commission from the Queen, *pro hac vice*, Lord High Steward.† The judges were in attendance in their state robes, and took their seats on the woolsack. The peers were attired in their robes, such of them as were knights also wearing the collars of their respective orders. The Lord Chancellor, Lord Cottenham, was absent through illness; but there were, independently of the Lord High Steward, no fewer than five law lords present—Lords Lyndhurst, Brougham, Wynford, Abinger, and Langdale. The side galleries were filled with ladies; and the scene was one of great solemnity and magnificence. The Lord High Steward having made reverences to the throne, to which he had been conducted by the state officer, the Garter King-at-Arms bearing the sceptre, and the Gentleman Usher of the Black Rod, the Lord Steward's staff, took his seat on the chair of state placed on the upper step but one of the throne. The necessary formalities of reading the commission, the writ of *certiorari*, and indictment, having been gone through, the Lord High Steward ordered proclamation to be made to the Yeoman Usher of the Black Rod to “bring James Thomas, Earl of Cardigan, to the bar.” This was quickly complied with; the Earl, accompanied by the officer above mentioned, appearing at the bar dressed in plain clothes. As he approached, he made three “reverences,” and knelt, till directed by the Lord High Steward to rise. He again made three reverences, respectively to the Lord High Steward, and his brother peers on each side of the house, they return-

† The mode of appointing this high officer, and of constituting the court, will be found explained at length in *Blackstone's Commentaries*, vol. iv. p. 259 et seq.

* 20th February 1841.

ing his courtesy. He was then conducted to a stool within the bar near his counsel. His demeanour was calm and dignified, and he had a very soldierly bearing. He was then in his forty-fourth year. The Lord High Steward's deep impressive tones were then heard, as he thus addressed the noble prisoner: "My Lord Cardigan, your lordship stands at the bar charged with the offence of firing with a loaded pistol at Harvey Garnett Phipps Tuckett, with intent to murder him; in a second count, you are charged with firing with intent to maim and disable him; and in a third count, you are charged with firing with intent to do him some grievous bodily harm. Your lordship will now be arraigned on that indictment." The reader will bear in mind that in each count Captain Tuckett's name was given as "Harvey Garnett Phipps Tuckett."

The Earl was then arraigned in the usual manner, by the Deputy Clerk of the Crown, in the Queen's Bench, who thus proceeded:—

"How say you, my Lord—are you guilty of the felony with which you stand charged, or not guilty?"

"EARL OF CARDIGAN.—Not guilty, my lords.

"DEPUTY CLERK OF THE CROWN.—How will your lordship be tried?"

"EARL OF CARDIGAN.—By my peers.

"DEPUTY CLERK OF THE CROWN.—God send your lordship a good deliverance."

The Earl, then, by leave of the House, sate down, uncovered: and after the usual proclamation had been made for all persons to come forward and give evidence, the Lord Steward, with the leave of the House, descended from his seat on the throne, and took his seat at the table. The Counsel for the Crown were the Attorney-General, the present Lord Campbell, and Mr Waddington, now the permanent Under-Secretary of State; and for the prisoner, Sir William Follett, Mr Sergeant Wrangham, and the late Mr Adolphus. It has been said, and is indeed intimated by Mr Townsend, that, imperturbable as was the self-

possession of Sir William Follett, on this occasion he exhibited unusual indication of an oppressive sense of responsibility. Both facts, indeed, and law were so "dead" against his noble client, and the consequences of conviction so serious and alarming, that nothing was left for him but to watch with lynx-eyed acuteness, in order to see that nothing but rigorously exact legal proof was adduced against his client.

The opening address of the Attorney-General was clear and temperate; faithfully stating the law which he charged Lord Cardigan with having violated, and the facts constituting the violation. He reminded the House that sixty-four years had elapsed since a similar trial had taken place—that of Lord Byron for killing his opponent in a duel. "I am rejoiced, my Lords, to think," continued the Attorney-General, in terms which immediately occasioned great observation, "that the charge against the noble prisoner at the bar *does not imply any degree of moral turpitude*: and that, if he should be found guilty, the conviction will reflect no discredit upon the illustrious order to which he belongs. But, my Lords, it seems to me that he has been clearly guilty of a breach of the statute law of the realm, which this and all other courts of justice are bound to respect and enforce. Your lordships are not sitting here as a court of honour, or as a branch of the legislature, but as a court of justice, bound by the rules of law, and under a sanction as sacred as that of an oath. * * * Your lordships are aware that the noble earl is in the army—Lieutenant-Colonel of the 11th Hussars; and I have no doubt that, on this occasion, he only complied with what he thought necessary to the usages of society. But, under these circumstances, though it would have been considered, if death had ensued, *a great calamity, and not a great crime*—though moralists of the highest authority have defended duelling—it remains for your lordships to consider what duelling is by the law of England." After quoting from the known

great authorities, Hale, Hawkins, Foster, and Blackstone, proving that a death by duelling was wilful murder, the Attorney-General correctly observed—"It necessarily follows, from this definition of murder, that the *first count* of the indictment is [that is, he expected it would be] completely proved. The only supposition, my Lords, by which the case can be reduced to one of *manslaughter* would be that Lord Cardigan and Captain Tuckett *casually* met at Wimbledon Common—that they *suddenly* quarrelled—and that, while their blood was up, they fought. But your lordships can hardly strain the facts so far as to suppose that this was a casual meeting, when you find that each was supplied with his second—that each had a brace of pistols—and that the whole affair was conducted according to the forms and solemnities observed when a deliberate duel is fought." Could anything be more clear and cogent? "Then, my Lords, with regard to the second and third counts of the indictment, I know not what defence can possibly be suggested; because, even if there had been this casual meeting, contrary to all probability and all the circumstances of the case—if it would only, had death ensued, have amounted to the crime of manslaughter—that would be no defence to the second and third counts of the indictment, as has been expressly decided* by the fifteen judges of England."

Such was the opening of the Attorney-General—such as must have left not a single crevice through which a glimpse of hope could be caught. The words of the Act of Parliament could not have applied more exactly to the facts of the case, as our readers must see, even if the Act had been expressly framed to meet these particular facts! The miller of Wimbledon, his wife and son, had witnessed the whole affair—the arrival of the parties on the ground, and the double interchange of shots. Lord Cardigan, on the spot, and at the police-office, in plain terms voluntarily avowed who

he was, what he had done, and who had been his second; the inspector of the police station being present to prove such avowal. Sir James Anderson, the surgeon, who had also seen the duel, and accompanied Captain Tuckett home, was in attendance as a witness. The miller, who had received Captain Tuckett's card, went, a week afterwards, to the residence mentioned in the card, and asked for, and saw, Captain Tuckett. It would seem as though the wit of man could not suggest how these facts could be evaded, or how they could fail of being proved!

Yet the case totally broke down; the whole prosecution crumbled into pieces, under the subtle and watchful dexterity of the consummate advocate to whom Lord Cardigan had committed his almost hopeless case. What does the reader suppose to have been the fatal flaw? Positively, neither more nor less than this: that the prosecution could not prove THE IDENTITY OF CAPTAIN TUCKETT! Each of the three counts in the indictment charged Lord Cardigan with having fired at Harvey Garnett Phipps Tuckett. That was his real name, but it became impossible to prove the fact; and, without such proof, the prisoner was, beyond all question, entitled to an acquittal. A man cannot be indicted for firing at A B, and convicted of firing at C D. If Captain Tuckett had been called, he could, of course, have instantly disposed of the difficulty; and it is said that that gentleman was actually in, or near, the House of Lords; but the Attorney-General explained that he could not call that gentleman, nor his second, because, though the bill against them had been ignored by the grand jury, "they were still liable to be tried," and therefore "it would not be decorous to summon them to give evidence which might afterwards be turned against themselves." And as for Captain Wainwright, he was in the situation of his noble fellow-prisoner, as a true bill had been found against him at the Central Criminal Court. What, then, shall be said against call-

* Anonymous. 2 *Moody's Criminal Cases*, 40.

ing Sir James Anderson? Fortunately for himself and for Lord Cardigan, he was in a position to be tried himself on a charge of having been present, aiding and assisting at the commission of a felony. On this gentleman being sworn, the Lord High Steward thus cautioned him, as he was bound to do in the case of any witness similarly situated:

"Sir James Anderson, With the permission of the House, I think it my duty to inform you, after the opening we have heard made by the Attorney-General of the facts of the case, that you are not bound to answer any question *which may tend to criminate yourself*." Doubtless, Sir James Anderson expected nothing less, and had come to the House of Lords perfectly at his ease. Therefore he came like a shadow, and so departed. Thus "had he his entrance and his exit"—

"ATTORNEY-GENERAL.—Of what profession are you?

"A.—I am a physician.

"Q.—Where do you live?

"A.—New Burlington Street.

"Q.—Are you acquainted with Captain Tuckett?

"A.—I must decline answering that.

"Q.—Were you on Wimbledon Common on the 12th September last?

"A.—I must decline answering that also!

"Q.—Were you on that day called in to attend any gentleman that was wounded?

"A.—I am sorry to decline that again!

"Q.—Can you tell me where Captain Tuckett lives?

"A.—I must decline answering the question!

"Q.—Has he a house in London?

"SIR WILLIAM FOLLETT.—He 'declines to answer the question.'

"A.—I have already said that I decline answering the question.

"ATTORNEY-GENERAL.—Where did you last see Captain Tuckett?

"SIR WILLIAM FOLLETT.—We [the counsel for the prisoner] have no right, my Lords, to interfere in this

case; * but, the witness having several times declined to answer the question, I apprehend that it is not regular for the Attorney-General, by circuitous questions, to endeavour to get him to answer.

"ATTORNEY-GENERAL.—I have never pressed him in any question I have put. [To Sir James Anderson]—Do you decline any question whatever respecting Captain Tuckett?

"A.—Any question which may 'tend to criminate' myself.

"Q.—And you consider that answering any question respecting Captain Tuckett *may* tend to criminate yourself?

"A.—It is possible that it would.

"Q.—And on that ground you decline?

"A.—Yes.†

"ATTORNEY-GENERAL, [to the House].—Then, unless your Lordships wish to ask any questions of the witness, he may withdraw.

"The witness was directed to withdraw."

Here, then, were four avenues through which light might have been thrown on a transaction which was the subject of such solemn and digni-

* The meaning of this observation is, that the privilege of not answering questions tending to criminate the witness belongs to the witness, and not to the parties; wherefore the objection to such questions ought to come from the witness, and not from the counsel for either of the parties. It is rather the duty of the judge to interfere, in order to apprise the witness of his right, in time. See the next note.

† The point here resolved came before the Court of Common Pleas, in November 1852, in the case of *Fisher v. Ronald*, 12 Common Bench Reports, 762; where the right claimed in the text as that of a witness, was amply vindicated by unanimous court. Mr Justice Maule referred to the case now under discussion: "In Lord Cardigan's case the witnesses were cautioned *before they claimed their privilege*. I do not know that a judge would do wrong if he were to caution a witness before every answer. . . . The witness may be conscious that there was evidence against him *which his answer might render complete*. . . . I think the judge is bound by the witness' oath: otherwise, you may exhaust all possibilities consistent with a man's innocence, and so convict him of even murder." "We must allow the witness," said the Chief Justice, "to judge for himself, or he would be made to criminate himself entirely."

fied inquiry by the most illustrious judicial assembly in the world, carefully closed: Sir James Anderson, Captain Tuckett, Captain Douglas, and Captain Wainwright. It will be further observed that Lord Cardigan, in his frank avowal at the police station, had happened not to mention the name of the gentleman whom he had fought and wounded; an omission probably altogether accidental, for his Lordship seems to have been in a humour of signal yet becoming and characteristic frankness.

The sole question in this celebrated case thus became one of identity. The indictment charging Lord Cardigan with having fired at one *Harvey Garnett Phipps Tuckett*, it became the duty of the prosecutors to prove that the prisoner fired at a person *bearing these names*; for as we have seen, all those names were used in each count. There might have been counts varying the names, so as to meet the evidence which might be reflected, especially calling him "*Harvey Tuckett*." Why this was not done, does not appear.* There was abundant evidence that Lord Cardigan had fired at and wounded a Captain Harvey Tuckett; but this might be a person totally different from him named in the indictment. The skill and vigilance of the prisoner's counsel were visible in tripping up his opponents whenever they approached inconveniently near his client. There is no reason to believe that Lord Cardigan's counsel were aware of there being the slightest difficulty, on the part of the prosecution, in proving the identity of the wounded man with the one specified in the indictment; but at the very

* By a recent Act (Stat. 12 and 15 Vict. c. 100, § 1), passed August 1851, the count may amend variances between statements in the indictment, and the evidence in, amongst others, the figure or description of the person alleged to be injured by the offender—or the Christian and surname, or either, of any one named in the indictment, if it be not "material to the merits of the case;" by which is meant the substantial defence to the charge. The prisoner, however, is not to be "prejudiced in his defence on such merit," by the amendment. The trial can be postponed, and be before the same, or a different jury.

first start, Sir William Follett perceived a faint possible advantage, and never for an instant lost sight of it.

"You tell us," said the counsel for the prosecution, examining the first witness—the miller, "that you saw the pistols fired a second time: did you observe whether either of the shots took effect?"

"A.—I thought Captain Tuckett was wounded—or, at least, the other gentleman: *I did not know who it was*."

"Q.—You thought that the gentleman, whom you afterwards knew to be Captain Tuckett, was wounded?"

"A.—Yes."

"Q.—Did you see what that gentleman did with his pistol, after the second shots were fired?"

"A.—No."

"Q.—You did not see whether he held it in his hand, or what he did with it?"

"A.—Which are you alluding to?"

"Q.—I am speaking of Captain Tuckett."

"SIR WILLIAM FOLLETT.—He has said he did not know who it was!"

Here was a stumble by the prosecutors, which their wary adversary never allowed them to recover. The miller then stated the giving of the card of address of "Captain Harvey Tuckett, 13 Hamilton Place, New Road," and produced it: but Sir William Follett objected to its being read in evidence against Lord Cardigan without evidence that he had seen it given, and was aware of what it was: and such evidence was not forthcoming. The Attorney-General then withdrew the card for the present, and asked the miller whether, on receiving it, he allowed the wounded gentleman to go; to which the answer was "Yes."—"In consequence of receiving this card, did you afterwards call at a particular house?" (meaning the house mentioned on the card, but which Sir William Follett had succeeded in excluding, for the present, from evidence). Sir William Follett objected that the question was a leading one, and it was not pressed. The witness then stated that, a week afterwards,

he called at No. 13 Hamilton Place; asked for "Captain Tuckett."

"Q.—Whom did you see?"

"A.—Captain Harvey Tuckett.

"Q.—Did you speak to him?"

"A.—I did.

"SIR WILLIAM FOLLETT.—I wish you would put your questions differently!

"ATTORNEY-GENERAL.—We ask him whom he saw.

"SIR WILLIAM FOLLETT.—He does not know Captain Harvey Tuckett, I suppose.

"Q.—Did you speak to him?"

"A.—I did."

The Attorney-General then tendered the card in evidence: and Sir William Follett, ignorant of what was written on it (for the Attorney-General had not specified in stating the case), objected to its being received. On this a very ingenious and elaborate argument ensued between him and the Attorney-General, whether this card was or was not admissible in evidence, at all events in that stage of the case. The latter insisted on the affirmative, on the ground that the card had been given to the constable in Lord Cardigan's presence, and the constable had afterwards gone to the address specified in the card. It was therefore a part of the *res gestæ*. "No," answered Sir William Follett; "it does not appear who it was that gave this card, or that Lord Cardigan saw it, nor that he knew what was written on it. The Attorney-General is trying to prove an important fact in the case, by an apparent *admission* of Lord Cardigan; whereas he is not shown to have had any cognisance whatever of the fact which he is supposed to have admitted!" The Lord High Steward said that, at all events, the House would postpone for the present its decision as to the admissibility of the card. "Whether the Attorney-General," said Sir William Follett, "will have any other evidence to prove who it was that had given the card, or to connect the card with the Earl, is another question"—which doubtless occasioned no little anxiety to the Earl and his astute counsel.

The next witnesses were the miller's wife and son, who were cross-examined by Sir William Follett irritably and severely, but ineffectually. They did not, nevertheless, appear to carry the case much farther than had the miller. Then came Mr Busain, the police inspector, who gave evidence of the facts already stated in connection with his name, in the Earl's avowal that he had just fought a duel, and hit his man. On his being asked a very critical question, viz., as to Captain Tuckett's having called at the magistrate's office and *given his name*, Sir William Follett anxiously and hastily interposed—"Was Lord Cardigan present then and there?" to which the answer was, "No, he was not." Sir William Follett therefore succeeded in excluding what Captain Tuckett had said on calling at the magistrate's office, and thus again "averted the decisive stroke."*

Then the Attorney-General called a Mr Matthew, a chemist in the Poultry, in whose house "Captain Tuckett" occupied rooms for business. Mr Matthew said that Captain Tuckett lived at "No. 13, Hamilton Place, New Road." He was then asked the Christian names of Captain Tuckett. On this, Sir William Follett interposed, and having elicited the fact that the witness had never been at the house No. 13, Hamilton Place, New Road, objected to the witness being asked the Christian names of the gentleman who had lodged with the witness in the Poultry! This objection, however, was overruled; but on the question being put, it turned out that the only names by which the witness knew his lodger were "Harvey Tuckett!" As a last resource, the Attorney-General called Mr Codd, an army agent, who paid "Captain Tuckett," of the "11th Light Dragoons," his half-pay, and *knew his name to be "Harvey Garnett Phipps Tuckett!"* But the witness added that he used to pay the money at his own house in Fludyer Street, Westminster, and had never seen Captain Tuckett except there, and at an insur-

* TOWNSEND, vol. i. p. 229.

ance office! Again was the Earl of Cardigan's star in the ascendant. How could the prosecutor connect the half-pay officer spoken of by this witness, with the Captain Tuckett shot by Lord Cardigan, and afterwards seen wounded in Hamilton Place?

The case was brought, at length, pretty nearly to a stand-still. "Is *that* your case, Mr Attorney?" inquired Lord Brougham; on which the Attorney-General pressed for the decision of the House as to the admissibility in evidence of the card which had been delivered by one of the parties on the ground to the constable.

"**LORD HIGH STEWARD.**—You object to its being received, Sir William Follett?"

"**SIR WILLIAM FOLLETT.**—Certainly, my lord; and I should wish to address your lordships, if any doubt is entertained on the subject.

"**LORD HIGH STEWARD.**—Their lordships are ready to hear your objection.

"**SIR WILLIAM FOLLETT** (to the Attorney-General).—Will you let me look at the card?"

The card was handed to Sir William Follett, who, on examining it, addressing the Lord High Steward, said calmly and resolutely—"My lord, I do not think it necessary to object to this card being read." And, indeed, he had no need to do so; for, as the reader must see, it did not advance the case a single hair's-breadth. [The card, it will be recollected, had, in print, the words, "*Captain Harvey Tuckett*, No. 13, Hamilton Place, New Road;" and there were written in pencil, on the back, the words, "*Captain H. Wainwright*."] With this evidence before them, it seems extraordinary that no counts should have been inserted, omitting the words, "*Garnett Phipps*"—when it might have appeared conclusively that Captain Tuckett was usually known by the name of Harvey Tuckett, which would have sufficed.

"Is *that* your case, Mr Attorney?" inquired Sir William Follett, with mingled anxiety and hope. "That, my lords, is the case on the part of the prosecution," said the Attorney-General:—on which, turning to the

High Steward with a confident exulting air, Sir William Follett "submitted to their lordships that no case had been made out, requiring an answer from the prisoner at the bar."

Into what a minute point this great case had dwindled! "There is no evidence whatever to prove," said Sir William Follett, "that the person at whom the noble Earl is charged to have shot, on the 12th September last, was Harvey Garnett Phipps Tuckett—the name contained in every count of the indictment. The evidence would rather lead to a contrary presumption, if presumption could be entertained in such a case; but it is incumbent on the prosecutor to give positive evidence of the identity of the person named in the indictment with the person against whom the offence is alleged to have been committed. * * * Is there anything before your lordships to identify the Captain Tuckett spoken of by the army agent, Mr Codd, with the person who is said to have been at Wimbledon Common on the 12th September last? There is nothing whatever."—"If there be the smallest *scintilla* of evidence," answered the Attorney-General, "the prosecution cannot be stopped on this ground; and there is abundant evidence from which it may be inferred that the person wounded in this duel was—Harvey Garnett Phipps Tuckett. We prove that the wounded gentleman was a 'Captain Tuckett';—that it was 'Captain *Harvey* Tuckett'; that the wounded Captain Tuckett lived at 13 Hamilton Place, New Road. Is there any doubt that it was *that* Captain Tuckett who had taken the premises in the Poultry? When he did so, he gave a reference to No. 13 Hamilton Place, New Road. Is it not an irresistible evidence, then, that the Captain Tuckett of the Poultry and of Hamilton Place, and who fought with Lord Cardigan, was one and the same person? There is only one other stage—that this Captain Tuckett is the Captain Tuckett of whom Mr Codd speaks. Is there not cogent evidence to prove the identity here? Would any person, out of a

court of justice, for a moment doubt the identity here? If not, can this House undertake to say *that there is not a scintilla* of evidence of identity before it?" "What we object," said Sir William Follett, in reply, "is this—that Mr Codd, who says he knows a Captain Tuckett who bears the names mentioned in the indictment, gave no *scintilla* of evidence to connect that individual with the gentleman who was on Wimbledon Common on the 12th September last. It depended altogether on Mr Codd to give such proof—and that proof he wholly failed to give. Your Lordships are now sitting as judges, to decide solely on the evidence which has been laid before you. The Attorney-General says that the card afforded *one* of the Christian names—'Harvey Tuckett;' but is that proof that the person mentioned in that card is the 'Harvey Garnett Phipps Tuckett' mentioned in this indictment? There may be two, or ten, or fifty persons named 'Harvey Tuckett.' I ask your Lordships, sitting as judges on a criminal case, and looking at the evidence alone—disregarding surmise, conjecture, and what you may have heard out of doors—whether there is any evidence to prove that the gentleman wounded on Wimbledon Common bears the name and surname of 'Harvey Garnett Phipps Tuckett?'"

The Lord High Steward, during the deliberation of the House with closed doors, delivered a luminous and convincing exposition of the legal merits of the case before the House:—

"There is an absolute want of circumstances to connect the individual at whom the pistol was fired, and who afterwards was seen wounded in Hamilton Place, with the half-pay officer known to Mr Codd as bearing the names set forth in the indictment on which your Lordships are sitting in judgment; for the mere fact of the wounded person bearing *some* of the names used by the half-pay officer, is no proof that the former and the latter are the same; and the representation by that officer of his having held a commission in the same regi-

ment of which Lord Cardigan told the policeman that he himself was colonel (which, coupled with the actual receipt of half-pay, may sufficiently prove that fact), cannot, I apprehend, be turned into a presumption that those two individuals would meet in hostile array. Here are two distinct lines of testimony, and they never meet in the same point."

* * * *

"No fact (*i. e.*, of identity) is easier of proof in its own nature; and numerous witnesses are always at hand to establish it, with respect to any person conversant with society. In the present case, the simplest means were accessible. If those who conduct the prosecution had obtained your Lordships' order for the appearance at your bar of Captain Tuckett, and if the witnesses of the duel had deposed to his being the man who left the field after receiving Lord Cardigan's shot, Mr Codd might have been asked whether that was the gentleman whom he knew by the four names set forth in the indictment. His answer in the affirmative would have been too conclusive on the point to admit of the present objection being taken.

"Several other methods of proof will readily suggest themselves to your Lordships' minds. Even if obstacles had been imposed by distance of time and place, by the poverty of those seeking to enforce the law, by the death of witnesses, or other casualties, it cannot be doubted that the accused must have had the benefit of the failure of proof, however occasioned; and here, where none of those causes can account for the deficiency, it seems too much to require that your Lordships should volunteer the presumption of a fact which, if true, might have been made clear and manifest to every man's understanding by the shortest process. Your Lordships were informed that no persons out of doors could hesitate, on the proof now given, to decide that the identity is well made out. Permit me, my Lords, to say, that you are to decide for yourselves upon the

proofs brought before you, and that nothing can be conceived more dangerous to the interests of justice, than for a judicial body to indulge in any speculations on what may possibly be said or thought by others who have not heard the same evidence, nor act with the same responsibility, nor (possibly) confine their attention to the evidence actually adduced. Your Lordships," continued the Lord High Steward, "sitting in this High Court of Parliament, with the functions of a judge and a jury, I have stated my own views, as an individual member of the court, of the question by you to be considered, discussed, and decided. Though I have commenced the debate, it cannot be necessary for me to disclaim the purpose of dictating my own opinion, which is respectfully laid before you with the hope of eliciting those of the House at large. If any other duty be cast upon me, or if there be any more convenient course to be pursued, I shall be greatly indebted to any of your Lordships who will be so kind as to instruct me in it. In the absence," continued the noble Lord, "of any other suggestion, I venture to declare my own judgment, grounded on the reasons briefly submitted, that the Earl of Cardigan is entitled to be declared Not Guilty."* This was followed by the unanimous declaration of "Not Guilty,"—pronounced successively "upon my honour"—by every peer present, beginning with the junior baron. The only variation of the form occurred in the case of the Duke of Cleveland, who said—instead of "not guilty, upon my honour"—"not guilty, *legally*, upon my honour." The white staff of the Lord High Steward was then broken in two; and so was dissolved the first—may it be the last—commission, during the present century, for the trial of a peer on a charge of felony.

Lord Denman's reasons for recommending an acquittal were unanswerable, and by special direction of the House of Lords, though not in conformity with precedent,† were publish-

ed, to enable the country to judge of the grounds on which the House had proceeded. The result, however, so contrary to that which had been expected, excited no little indignation; and the *bona fides*, even of those who conducted the prosecution, was very sternly questioned. It was insinuated by some of the most powerful organs of public opinion, that the prosecution had been taken up unwillingly, and with not even ordinary precautions to secure the ends of justice. "We ask," said the *Times*, "whether the law officers of the Crown had no foresight to anticipate, or no disposition to provide against, a conclusion so unsatisfactory? Is any man capable of believing that if some tailor, or linen-draper, had been indicted at the Old Bailey for the crime of stealing—or that he, having an honour to vindicate equally with noble lords, pistolled and wounded one of his companions—does any man believe that, in such a case, we should have heard of any miscarriage, or of any name that could not be proved? Oh no! there would then have been precautions in abundance—there would have been no loophole left—there would have been no lack of friends and relatives carefully subpœnaed to prove all the Christian names of the necessary party."

We ourselves have reflected frequently on the result of this trial: and the points which have occurred to us are two. *First*, Why was not Captain Tuckett summoned to the bar of the House of Lords—if merely to be pointed out to the witnesses to see if they could identify him? The miller could have been required to look at him, and been then asked—"Is that the person whom you saw lying wounded on the common?"—and Mr Codd could then have been also required to look at Captain Tuckett, and say—"Is that the gentleman to whom you used to pay half-pay as Captain Tuckett of the 11th Light Dragoons, and whose name you knew to be Harvey Garnett Phipps Tuckett?" On both these witnesses answering these questions in the affirmative, it would have

* TOWNSEND, 239-241.

† Ibid., 238.

required a thousand times even Sir William Follett's ingenuity to suggest a further doubt on the point of identity. This was the course which the Lord High Steward plainly pointed at, in his address to his brother peers, as that which might have been adopted. *Secondly*, Why was not the name of Captain Tuckett varied in various counts of the indictment, so as to meet not every probable, but every possible doubt and difficulty? If in one count he had been called "Harvey Tuckett," it would have sufficed to meet the evidence actually adduced; and the other counts might have respectively described him as "Harvey Garnett Phipps Tuckett"—"Harvey Garnett Tuckett"—"Harvey Phipps Tuckett"—"Garnett Tuckett"—"Phipps Tuckett"—even adding to these other combinations of the four names in which Captain Tuckett rejoiced. To dispose first of this latter point—we verily believe that, up to the moment when the question of identity was started, the counsel for the prosecution, and their clients, believed that the proof of identity was a matter of course. The indictment had been preferred before the Grand Jury at the Central Criminal Court; and was doubtless framed, in the ordinary course, by the clerk of indictments, from the depositions—in which might have appeared all the four names of Captain Tuckett, without any intimation of doubt or difficulty as to the fact of those being his names, or as to proof that they were. Possibly the clerk had before him a positive statement that Mr Codd, the army agent, who paid Captain Tuckett his half-pay, could clearly prove that his name was "Harvey Garnett Phipps Tuckett;" and that, if so, it was a needless and expensive encumbering of the record to insert counts aimed at only imaginary difficulties. The indictment having once gone before the Grand Jury, and been returned a true bill, no alteration could have been made in it, especially after it had been removed by *certiorari*. * * * Doubtless the brief of the counsel for the prosecution would con-

tain the evidence of Mr Codd, in as direct and positive a form as could be imagined; and they would regard him, as the army-agent of Captain Tuckett, as peculiarly qualified to prove his real names. When the difficulty had been started, we know of no degree of ingenuity that could have been exhibited by counsel, exceeding that of the Attorney-General, in his contests on the point with Sir William Follett. All experienced practical lawyers will acknowledge the probability that the solution of the question here proposed is the true one. It is easy to be wise after the result. A blot is not a blot, until it has been *hit*.

Adverting again to the absence of any effort to produce Captain Tuckett at the bar of the House of Lords, be it observed that there is no evidence that he was in attendance, or that he could have been met with, at the exact moment when his presence was required. It may have been, that no order of the House had been obtained for his attendance, only because it had not been thought necessary; that no difficulty was anticipated, which his attendance could solve; and in the absence of direct legal compulsion, Captain Tuckett may have felt it a point of honour not to volunteer himself as a witness against his brother duellist. We can also readily believe that the counsel for the prosecution were anxious to conduct a perfectly novel case—the first instance on record of an attempt to bring a non-fatal duel under the category of felony, with its alarming incidents and consequences—with unusual liberality, and not to exhibit anything like a vindictive pressure upon the accused. They knew, besides, that Captain Tuckett was himself liable, at that moment, to be placed in the same situation as Lord Cardigan; and that it would have been idle to call before the House of Lords a witness who would come armed with a right to decline answering any question which he believed might even *tend* to criminate himself.

It must also be borne in mind that the Attorney-General boldly avowed,

before the House of Lords, that he regarded the act with which Lord Cardigan stood charged as one devoid of "any degree of moral turpitude," and that "a conviction would attach no discredit to the illustrious order to which he belonged." These observations, proceeding from an Attorney-General on a solemn official occasion, became, a few days afterwards, the subject of grave discussion and censure in the House of Lords. But even the excellent Earl of Mountcashel thus pointed at the practical hardship of Lord Cardigan's position—"An officer in the army receives an affront. His brother officers expect he shall go out. If he do, he encounters the pains and penalties of the statute 1 Victoria, c. 85; if he refuse, he is obnoxious to the contempt of his brother officers."* It was, certainly, not to be expected that an Attorney-General, entertaining and avowing the views of duelling which he did—and having to deal with a nobleman bearing her Majesty's commission, who was placed in the dilemma indicated by Lord Mountcashel, and had fought his duel "fairly," and unattended by fatal consequences—should have been as eagle-eyed a prosecutor as if he had had to deal with a man, gentle or simple, military or civil, who had shamefully

* 1 TOWNSEND, p. 211. Lord Campbell has included his opening address in Lord Cardigan's case among his published "Speeches," and thus deprecates the censures which had been past upon him: "I was much hurt by an accusation that my address contained a defence of duelling, and had a tendency to encourage that practice. Nothing could be further from my intention. * * * I continue to think that to engage in a duel, which cannot be declined without infamy, and which is not occasioned by any offence given by the party whose conduct is under discussion, whether he accepted or sent the challenge, though contrary to the law of the land, is an act free from moral turpitude. * * * I consider that to fight a duel must always be a great calamity, but it is not always, necessarily, a great crime." Fully acknowledging the difficulties of the subject, we publicly and solemnly disclaim participation in these opinions, for reasons already laid before our readers. We give Lord Campbell full credit for the purity of his motives, and the sincerity of his convictions; but we must withhold our concurrence from opinions which ignore *moral turpitude* in a breach of THE LAW OF GOD.

provoked, and as disgracefully fought, a fatal duel.

Had Lord Cardigan been convicted, he would still have had a *chance* of escaping the serious personal consequences, by claiming that absurd and unjust privilege of the peerage of which Lords Mohun, Warwick, and Byron, in past times, had respectively availed themselves, immediately on their having been convicted, in cases of fatal duels, of manslaughter. This privilege had been confirmed by statute, 1st Edward VI. c. 12, § 14, which was passed in the year 1547, and consisted in enabling a lord of parliament and peer of the realm to have benefit of clergy for a first conviction of felony—that is to say, to escape the penal consequences of conviction, on simply alleging that he was a peer, and praying the benefit of that act! In 1827, however, by one of the statutes which effected so salutary a reform of our criminal law (statute 7th and 8th Geo. IV. c. 28, § 6), it was enacted as follows,—that "benefit of clergy, with respect to persons convicted of felony, shall be abolished." It had been intended, by this section, to repeal that of the 1st Edward VI. c. 12, § 14; but serious doubts were entertained, during the pendency of Lord Cardigan's trial, whether that intention had been effectuated. We offer no opinion on the point, which would have been argued, of course, with desperate pertinacity, and commensurate learning and ingenuity, had the occasion for such an exhibition arisen. To extinguish, however, all possible doubt, and prevent any future failure of justice, an act was passed in the same session during which Lord Cardigan was tried (statute 4th and 5th Vict. c. 22, 2d June 1841), asserting that "doubts had been entertained" whether, notwithstanding the statute of 1827, that of 1547 "might not, for some purposes, still remain in force." The statute of 1841 had but one section, which declared the 1st Edward VI. c. 12, § 14, to be "thenceforth repealed, and utterly void, and no longer of any effect;" and enacted that

"every lord of parliament, or peer of the realm having place in parliament, against whom any indictment for felony may be found, shall plead to such indictment, and shall, upon conviction, be liable to the same punishment as any other of her Majesty's subjects are, or may be, liable upon conviction for such felony."

Thus stands the law of DUELLING, alike for lord and commoner; whom we trust we have satisfied of the alarming responsibilities entailed upon those who may choose to perpetrate these outrages upon the laws of their country.

In closing this paper, and taking leave of a painfully interesting topic, he would fain express a hope, and also a belief, that a better feeling on the subject of duelling is gaining ground, in this country, than has existed for centuries. There is growing up a spirit of dignified submission to the law of man, based as it is on the law of God, which totally prohibits these unholy exhibitions of murderous malevolence. A truer estimate is formed of the nature of HONOUR—one which forbids alike the offering, and the resenting, of insults. The following noble paragraph, recently introduced into the Articles of War, is worthy of being written in letters of gold—of being exhibited (with suitable variation of expression) in every place of public resort, and in every possible manner brought under the notice of men of the world, and the youths in our public schools:—

"We hereby declare our approbation," says her most gracious Majesty,* "of the conduct of all those who, having had the misfortune of giving offence to, or of injuring, or of insulting others, shall frankly explain, apologise, or offer redress for the same; or who, having had the misfortune of receiving offence, injury, or insult from another, shall cordially accept frank explanation, apology, or redress for the same; or who, if such explana-

tions, apology, or redress are refused to be made or accepted, and the friends of the parties shall have failed to adjust the difference, shall intrust the matter to be dealt with by the commanding officer of the regiment, or detachment, fort, or garrison; and we accordingly acquit of disgrace, or opinion of disadvantage, all officers who, being willing to make or accept such redress, refuse to accept challenges, as they will only have acted as is suitable to the character of honourable men, and done their duty as good soldiers, who subject themselves to discipline."

There speaks the Queen of England!

The following is the stringent Article of War† on the subject of duelling:—

"Every officer who shall give, send, convey, or promote a challenge; or who shall accept any challenge to fight a duel with another officer; or who shall assist as a second at a duel; or who, being privy to an intention to fight a duel, shall not take active measures to prevent such duel; or who shall upbraid another for refusing or for not giving a challenge; or who shall reject, or advise the rejection of, a reasonable proposition made for the honourable adjustment of a difference, shall be liable, if convicted by a general court-martial, to be cashiered, or suffer such other punishment as the court may award.

"In the event of an officer being brought to a court-martial for having assisted as a second in a duel, if it shall appear that such officer had strenuously exerted himself to effect an adjustment of the difference, on terms consistent with the honour of both the parties, and shall have failed, through the unwillingness of the adverse parties to accept terms of honourable accommodation, then our will and pleasure is, that such officer shall suffer such punishment, other than cashiering, as the court may award."

* *Articles of War*, Art. 17.

† Art. 101.

MODERN STATE TRIALS.*

No. V.

THE MURDERED GLASGOW COTTON-SPINNER; AND THE TRIALS OF DANIEL O'CONNELL AND WILLIAM SMITH O'BRIEN.

WITH this part we propose to conclude the short series which we have founded on Mr Townsend's "Modern State Trials." They are fifteen in number, of which we have selected for illustration *five*:—one for murder, that of Daniel M'Naughten; two for high treason, those of Frost and Oxford; one for wounding in a duel, that of the Earl of Cardigan; and one for forgery, that of Alexander Humphreys, or Alexander. Each of these possesses points of permanent interest, which we have taken no small pains to bring out clearly and popularly,—always keeping in view, moreover, the objects which we proposed to ourselves at the outset. A subordinate one was to contrast the trials taking place in England, Scotland, and Ireland, as exhibiting some of their respective peculiarities of criminal procedure, and the characteristics of their respective judges and advocates. Of the entire series in Mr Townsend's volume, there are ten English, three Scottish, and two Irish trials—those of Daniel O'Connell and his companions in 1843-4, for treasonable conspiracy, and Smith O'Brien in 1848, for high treason. We intend, in this paper, to indicate the most interesting features of another Scottish, and the two Irish cases.

I. The "trial of Hunter and four others, at Glasgow, on January the

3d, 1838, and seven following days, for conspiracy and murder," is reported at considerable length by Mr Townsend, but by no means more fully than is justified by the extraordinary nature of the case, and the striking incidents developed at the trial.†

A little after eleven o'clock on the night of Saturday the 22d July 1837, a poor fellow named John Smith, an industrious cotton-spinner of Glasgow, was returning home, accompanied by his wife, after making a few purchases for their Sabbath's dinner. A minute or two after quitting a butcher's shop, he suddenly fell in the street, mortally wounded, having been shot in the back. One bullet had passed through his arm, and the other severed the spinal cord! In his dying declaration, the next day, he stated that "he was unable to say who had shot him, and had no suspicion who had done so, nor had he heard any footsteps behind him before having been shot;" "that he was convinced that it was on account of his having taken work from his employers, Messrs Houldsworth and Sons, that he had been shot last night;" "all this he depones to be the truth, as the deponent shall answer to God." The following touching description of this barbarous transaction was given by

* *Blackwood's Magazine*, June 1851.

† Mr Townsend's account of this trial is taken, as was that of Alexander, mainly, if not altogether, from an elaborate report, published in an octavo volume, by Mr Swinton, in the year 1838; though in this instance, also, no allusion is made to the fact, doubtless from inadvertence.

Mr Robertson, the counsel for the individual by whom it was alleged that the act of murder had been committed. "It was a murder perpetrated on this poor man, who had finished his week of labour in the toilsome occupation to which Providence had destined him; and who was entitled to lay his head for one night on his peaceful pillow, and look forward to the return of that day when even the weary artisan is entitled to repose of body, and rest of mind, that he may dedicate to his God one day of the week, and pass some hours without bodily fatigue, if not without mental solicitude. At that moment the cowardly assassin, lurking behind, draws the fatal trigger, which hurries this honest and toil-worn artisan, in a very few hours, to the presence of the God who made him, and terminates his earthly course of toil and care." This was carrying into the heart of Glasgow an atrocity such as are so frightfully familiar to us as happening in Ireland. The murdered man's offence was—having taken work from his employers at a lower rate of wages than his companions chose to accept, and who had consequently "struck work." Six hundred pounds reward (five hundred by the master cotton-spinners of Glasgow, and one hundred by Government) were immediately offered for the discovery of the assassin, but in vain.

This murder formed, says Mr Townsend, the crowning act of other desperate enormities recurring during different strikes in the cotton trade, and which had been attributed to the same gigantic conspiracy—the "Association of Turn-out Spinners"—whose leaders had hitherto remained undetected. For presuming to work at reduced rates of wages, men had been fired at and wounded in open day, on the Green, in Glasgow, in the presence of scores of fellow-labourers, none of whom would protect the assailed, or inform against the murderous miscreants who had so attacked them! To deter masters from taking fresh hands, fire-balls were thrown into the mills; and canisters ignited,

full of blazing combustibles, flung into the bedrooms of private dwellings! The houses of workmen were invaded at dead of night, and the inmates forced to take an oath that they would discontinue work, for the future, on pain of death! A woman was brutally beaten to death in her own house, having been mistaken for her daughter, who had presumed to take the forbidden work! Vitriol was thrown on a poor fellow guilty of the same offence, and he died in horrible tortures: but though the ruffian perpetrator of the outrage was fortunately detected and executed, his companions were not deterred from prosecuting their career of cruelty and crime. The masters were compelled to wear masks, to protect them from the vitriol thrown at their faces! and were accustomed to receive letters threatening horrible modes of death, if they did not yield to the demands of their men! These deeds of atrocity and blood, which had for *twenty years* disgraced Scotland—sober, well-educated Scotland—Scotland in the nineteenth century—were traced, at length, to the infamous association which has been mentioned, having ramifications in the three kingdoms, comprehending hundreds of thousands of workmen. At the will of a secret and self-elected body of fifteen men, these trades-unions perpetrated systematic acts of tyranny almost incredible, and entailing incalculable misery on their victims; "who all," said Mr (now Sir Archibald) Alison, (whose noble conduct in this affair we shall have speedily to notice), "got deeply into debt if they had any credit; and, if they had none, sank into such habits of idleness, profligacy, and intemperance, that great numbers have been permanently rendered mere nuisances and burdens to society. The cotton-spinners' strike alone instantly threw six or seven thousand women and children out of employment for a long period: eight thousand human beings were retained in a state of destitution and wretchedness for four months—merely at the pleasure of fifteen men!" The total loss entailed on the

county of Lanarkshire alone, by these various strikes, was half a million sterling! Between twenty and thirty thousand young persons of both sexes were thrown into compulsory idleness for many months: the funds for their support grew rapidly less and less; each week they sank into deeper penury; and the starving pauper rushed desperately and recklessly into crime. The prisons were crowded with ten times their ordinary number; fever and other deadly diseases crept stealthily in the rear of "combination," and gleaned a copious harvest of death in the weakened victims of enforced want. Such effects must ever be produced by such causes.

On the murder of Smith being officially reported to Mr Alison, the Sheriff of Lanarkshire, he resolved, "come what come might," to crush the destructive combination which had occasioned it; and, accompanied by Captain Miller and a strong police force, he boldly burst into the committee-room of the association, at ten o'clock on a Saturday night, four days after the death of Smith; and the result was the capture of fifteen of the ringleaders, together with all their books and papers. He thus described the scene, not as Mr Townsend erroneously supposes, in his evidence at the trial, but on a subsequent occasion, and in a quasi-official capacity. Though sinking all allusion to himself, every word of his eulogy tells really as strongly upon himself as on Captain Miller; and we are delighted by the opportunity of doing an act of mere justice, by bringing conspicuously forward this instance of gallant daring.

"My lords, when I recollect Captain Miller's conduct when he entered the committee-room of the conspirators, and reflect on the moment when I stood beside him in the middle of the apartment, as he beckoned them out one by one, till the whole fifteen were delivered over to the police on the outside, with as calm a manner and resolute a voice as if he were now discharging his ordinary duty in this court; and when I call to mind the

character and proved deeds of the conspiracy, and recollect that every room in the house was then also crowded with conspirators, and that hundreds of the association thronged the streets, almost within call, I cannot but regard his conduct on the occasion as one of the most remarkable instances on record of that moral resolution which is at once the shield of innocence and the bridle of crime, and which, paralysing guilt by the ascendancy of courage, proves its own safeguard by the awe which it inspires."

The effect of this enterprise was decisive, great, and consolatory. It palsied the energies of the entire confederacy. Early in the ensuing week the strike was at an end: the deluded, miserable, beggared followers of such wicked leaders, after four months of suffering and privation, returned to their work; and life and property were once again safe from molestation, and have ever since so continued. The captives were detained in custody till the ensuing January, when the five prisoners in the case before us were put upon their trial. A few witnesses, tempted by the reward, and relying on the protection of Government from the vindictiveness likely to be developed by their disclosures, came forward to throw light on the nature, character, and proceedings of the association. Great preparations were made on both sides for this important trial, after nearly half a year's interval. A thousand pounds were subscribed by the working-men towards the expense of the defence, for which five of the most eminent advocates were retained; the Crown being represented by the Lord-Advocate, the Solicitor-General, and two other leading advocates. The indictment extended over twenty-six quarto pages; and ninety-one witnesses were summoned!

The prisoners were charged with a conspiracy to keep up wages by molesting other workmen, and the perpetration of acts of violence to the persons and property of masters and workmen. They were further charged in the Cri-

minal Letters,* which gave a long narrative of the atrocities that had been perpetrated for twenty years, with conspiring to burn mills, to set fire to private dwellings, and to murder Smith by the hands of one of the prisoners, M'Lean. It is not our intention to give a detailed account of the trial, which was necessarily troublesome and harassing, from the extent and multiplicity of the circumstances requiring to be brought distinctly under the notice of the jury, in order that a real "conspiracy" might be established, and the parts borne in it proved as against the prisoners respectively charged with it. "The whole defence," says Mr Townsend, "was founded in fraud, and supported by perjury."† Mr Duncan M'Neill, now [1854] the Lord Justice-General, defended four of the prisoners, and very ably and powerfully—though in this instance, contrary to Mr Townsend's wont, he is unaccountably nig-gard of his praise. He says briefly that the defence "was shrewd, plain, forcible, and pathetic;" which last expression does not appear to us properly to characterise the strain of vigorous eloquence which was really poured forth before the jury. Mr M'Neill's peroration was at once sober and deeply impressive. Mr Robertson appears to have figured very favourably in the eyes of Mr Townsend. He "commenced his eloquent oration by," &c.; "The accomplished orator denounced," &c.; "In his peculiar vein of banter and pleasantry, he ridiculed," &c. After giving copious extracts from

this speech, Mr Townsend deals somewhat unceremoniously with the "very minute and elaborate summing-up of the Lord Justice-Clerk, which occupied thirteen hours," but which Mr Townsend disposes of in nearly as many lines. "He let the jury clearly infer, as the intimation of his opinion, that the minor conspiracy, charged as having been to keep up wages by threats, intimidation, and acts of illegal violence to the persons of masters and workmen, was proved; but that the heavier conspiracy—to keep up the price of labour by fire-raising and murder—was *not* fully proved."

* * * A case of greater public importance has seldom or never been brought before a jury. After an absence of five hours, the jury returned with a verdict which, we presume, was in full conformity with the summing-up: "My lords, the jury have, by a majority, found the charges Nos. 1, 2, 3, and 10, against all the panels, proven: and they have unanimously found the rest of the charges not proven." Mr Townsend has forgotten to give any account of the different heads of charge, so that, as we have not Mr Swinton's report before us, we cannot appreciate the precise effect of this report of the finding. It was, however, followed immediately—"between eleven and twelve o'clock at night"—by "most impressive statements of the reasons for passing so serious a sentence" as that of transportation for seven years.

On this trial we have two or three observations to offer. *First*, the prisoners were allowed twenty-five peremptory challenges to the jury—an indulgence which would not have been granted them in England, where peremptory challenges are allowed in cases of felony alone, not in misdemeanours; a distinction, however, unknown to the law of Scotland, where all offences are denominated "*crimes*" only. Our general readers may like to know that there are two kinds of challenges: *peremptory*—i. e., an objection to a man's serving as a juror, made *simpliciter*, without assigning any reason for it; and *for cause*—i. e., a

* There are two methods of criminal procedure in Scotland—by Indictment, and by Criminal Letters; "which," says Mr Alison (*Pract. of the Crim. Law*, p. 211), "though different in form, are the same in substance." The "Indictment" is at the instance of the Lord-Advocate alone, and runs in his name; Criminal Letters proceed in the Sovereign's name. In so far as concerns the trial, there is no practical difference between the two methods of procedure. In the case before us, Mr Townsend speaks in one place of the Criminal Letters as "the Indictment" (p. 230), having probably failed to notice the distinction between the two forms of procedure.

† TOWNSEND, p. 196.

challenge assigning the ground or reason on which it proceeds. This distinction exists also in Scotland. By stat. 3 George IV. c. 85, the prosecutor and the prisoner have each *five* peremptory challenges; and where Mr Townsend speaks of the prisoners having been allowed twenty-five peremptory challenges, we presume he must, if aware of this statute, mean that each of the five prisoners exercised his full statutory right of peremptory challenge.

Secondly, the sentence was one of transportation, on conviction for that which in England would be regarded as only a misdemeanour at common law. In England this punishment can in no case be inflicted, except where expressly imposed by statute; but there is no such distinction in Scotland, where the common law empowers the judges to pass this or any other sentence applicable, in their discretion, to the quality of the offence of which the prisoner may have been convicted. The common law of England punishes even the most aggravated misdemeanour by either fine and imprisonment, or by both. Lord Brougham, in the House of Lords, endeavoured to urge on the Government a mitigation of punishment, on the ground that in England only three months' imprisonment would have been inflicted. With due deference, however, we concur with Mr Townsend in regarding this ground as totally untenable. Besides, in aggravated cases of misdemeanour, two years is a common period of imprisonment; and there is nothing to prevent the infliction of three or four years, or even longer imprisonment, according to the discretion of the judges trying the case.

Thirdly, according to Mr Townsend, there exists in the Scottish courts "a strange and irrational rule, that no question can be asked in *re-examination*!" And he states that, in this trial, it was owing to the operation of this rule, "that the guilt of actual participation in the murder could not be brought home to the prisoners!" and also that "the formation of the infamous Secret Committee was left

in doubt." * Mr Townsend, however, has unintentionally aggravated the defective state of the law, as it stood at the period of this trial. It was then fully competent to re-examine a witness, to any legitimate extent, after his cross-examination had been completed, but not to recall him for that purpose after he had quitted the witness-box, and heard the evidence of other witnesses. It was *this* rule which had such a deleterious operation in the case before us; and the rule has been since relaxed by the legislature,† at the instance, we believe, of Lord Rutherford. From another part of Mr Townsend's account of the case,‡ it appears distinctly that a witness, "*on his re-examination*" gave a most important explanation of an answer which had been elicited on cross-examination.

Fourthly, English lawyers will be greatly astonished at finding the gossiping account of what she had casually seen of the alleged murder, given by a woman, since dead, to an acquaintance, gravely received in evidence at the mouth of that acquaintance without any objection made, though "it turned the nicely-poised scales in favour of M'Lean,"§ the principal prisoner, to whom was strongly imputed the very act of the murder! The witness was a cotton-spinner, who said that the woman in question had died of a fever since the death of Smith (the murdered man). The witness, having heard her say that she had seen Smith shot, went to her, asked her if such was the fact, and, if so, what sort of man it was, when she replied, "A little set man, with dark moleskin clothes." This evidence was mightily relied on by the prisoners' counsel, who had elicited this portion of the evidence on cross-examination; and was allowed to call the wife of the witness to give *her* version of what she had heard the deceased woman say—"That he was a little man, with dark dirty moleskin clothes, and below the common size of men!" In

* Vol. ii. p. 160.

† By the Act 3d and 4th Vict. c. 59.

‡ P. 18d. § TOWNSEND, vol. ii. p. 188.

commenting on this evidence, Mr Robertson suddenly called upon his client in the dock to stand up: he instantly did so, and proved a taller man than any of the other prisoners!* We have looked through Mr Alison's section on Evidence, in his "Practice of the Criminal Law of Scotland," and see nothing to sanction the reception of such evidence; for which, we repeat, we are totally unable to account.

Lastly, it will be observed, that the verdict of Guilty was that of a majority only of the jury; and as it proved to have been one of eight to seven—*viz.*, a majority of *one* only—on that circumstance was founded an urgent appeal to Government and to Parliament for a remission of sentence, backed by a memorial to the Queen from the prisoners' counsel, and a petition from the *minority* of the jury, stating that, in their opinion, none of the charges were proved! Lord Melbourne strongly resisted the application made by Lord Brougham in the House of Lords; taking the opportunity of remarking, on the illustration afforded by the cause assigned for it, of "the inconvenience of the law of Scotland in not requiring *unanimity*." If they were to reflect on the length of time the jury took to consider their verdict, and the time they were out, and make these circumstances raise a presumption for attacking the verdict, there would be no end of such pro-

ceedings."† Thus much for two Scottish trials. Turn we now to

II. Two Irish trials—and those, moreover, really "*State trials*," and of the first magnitude: those of the late Daniel O'Connell and his eight companions, in 1843-4, for treasonable conspiracy; and of Smith O'Brien, in 1848, for high treason. These are the only two Irish trials in the collection; and, but for the length to which this series of papers has unexpectedly extended, we should make the former of the two the subject of an entire article, for it possesses many features of vivid and enduring interest, in the eyes equally of political and forensic readers.

There was something grand and ominous in the position of affairs in Ireland, which led to the prosecution of the late Daniel O'Connell and his companions, in the year 1843-4. That consummate veteran agitator had been suffered, by a sagacious and powerful Government, to proceed step by step in his treasonable conspiracy to dismember the British empire, up to a point when the bloody outbreak of civil war seemed inevitable. That he was never in earnest in agitating for a repeal of the Union, and never dreamed of being able to effect it, was the opinion of the great majority of thinking persons, whose attention had been directed to his character and movements. He heartlessly adopted it as an expedient for maintaining his political ascendancy, and securing splendid pecuniary resources from his credulous and confiding fellow-countrymen. *They* believed him in earnest; that he was honestly earning his income; and paid him accordingly, cheerfully and punctually. He told them that, as fear alone had extorted Roman Catholic Emancipation, so fear alone could, and would, extort a repeal of the Union; and that he would guarantee success, provided the people trusted to him steadfastly and implicitly. At length, on the 2d January 1843, he ventured solemnly to declare that the repeal year had commenced—that, before it closed, the ac-

* This gives Mr Townsend occasion to mention a curious incident which, he says, occurred some years ago in an English trial, on the Western Circuit. It was a case of theft; and the prisoner's guilt was deemed to have been brought home to him by the foot-marks of two feet, traced from the place of the theft to his dwelling. His counsel had, to the surprise of all in court, cross-examined minutely as to these foot-marks, their length and breadth, and the depth of the impressions; and at the close of the case for the prosecution, laughed the case out of court, by desiring the prisoner to show his nether extremities to the jury. He had a *wooden leg*! Can this be true? Is it conceivable that those conducting the prosecution were not aware of the circumstance of the prisoner having a wooden leg? How could it have escaped the notice of those who arrested the prisoner, who had had him in custody ever since; and of the committing magistrates?

† HANSARD, 3d Series, vol. ii. p. 938.

cursed link which bound Ireland in forced and fraudulent union to Great Britain would be snapped asunder. Keeping skilfully within the letter of the law, and relying on the proverbial caution and forbearance of Sir Robert Peel and the Duke of Wellington, Mr O'Connell at length appeared to act upon his own avowed convictions, by taking steps to secure the great result "of all his political labours—the emancipation of Ireland." His monster meetings, twenty or thirty in number, held in different parts of Ireland—some attended, as he boasted, and as was generally believed, by hundreds of thousands of enthusiastic and unanimous fellow-countrymen—appeared at length to have convinced him either that success was within reach, or that he *must* really proceed upon that assumption.

A mixture of feelings—of anxiety, of fear, of intoxicated vanity, of excitement that left no interval for calm reflection—seems at length to have overpowered his prudence, and confused his natural clear-sightedness. He suffered a quasi-coronation amidst hundreds of thousands of future willing subjects; and at length boldly sanctioned the organisation of his myriad adherents in military fashion. Foreign Governments looked on at the apparent irresolute inaction of the British authorities with amazement; and great numbers of persons in this country began to entertain dire apprehensions, and to regard the silence and inaction of the Government as at once inexplicable and inexcusable. Parliament separated in the autumn of 1843, leaving affairs, with mingled confidence and solicitude, in the hands of Ministers. A tremendous responsibility indeed was theirs; for immediately afterwards matters assumed an infinitely more alarming aspect. The meetings were held with increasing frequency, attended by vastly augmented numbers, and characterised by speeches, arrangements, and plans for the future, of dangerous audacity. On the first of October a meeting was held at Mullaghmast, attended, as Mr O'Connell himself publicly declared shortly

afterwards, by *a million of persons*!—the lowest calculation, by independent military observers, placing them at a quarter of a million! Mr O'Connell stated at that meeting, "I choose this place for the meeting, because it was the precise spot on which English treachery, and false Irish treachery, consummated a massacre unequalled in the world, until the massacre of the Mamelukes by Mehemet Ali!" Another meeting was appointed to be held a week afterwards—on the 8th October—of a still more decisive character; an article relating to it in the *Pilot*, one of Mr O'Connell's newspaper organs, being headed, "*The Battle of Clontarf—the Repeal Year!*" The language of Mr O'Connell himself was characterised by greatly augmented audacity; and the well-affected in Ireland, as well as everywhere in Great Britain, looked on daily with hourly increasing anxiety and wonder, at the course which might have been, or might be, adopted by Government to meet this tremendous exigency. They were somewhat reassured, however, by the vast military preparations going on in Ireland, directed by THE DUKE; and which he, and indeed all men knew, would have been personally supported even to the point of death, by every Englishman, Scotchman, and Irishman, capable of bearing arms and shedding his blood as a loyal subject of Queen Victoria.

That these military preparations filled with dismay all those even most vain-glorious among the Irish disaffected, is undoubted; but they did not prevent their uttering loud notes of warlike defiance. But how long was this fearful and sickening suspense to last? Every post from Ireland was expected to bring intelligence that civil war had commenced. The Lord-Lieutenant and Lord-Chancellor of Ireland (Lord de Grey, and Sir Edward Sugden, now Lord St Leonards) came over to England to consult with the Government, and returned on Friday the 6th October—ten days only before the dreaded Clontarf gathering on the ensuing Sunday—and immediately held a Privy Council at Dublin

Castle, the result of which was looked for in an agony of excitement and apprehension by all parties: the general expectation being that the intended meeting would be declared by proclamation illegal and treasonable—and probably Mr O'Connell and his companions arrested on a charge of high treason. In the mean time, their adherents were pouring in hourly from Liverpool and the remotest quarters of Ireland; simultaneously with ammunition, artillery, and regiments of infantry and cavalry, forwarded by the Government. Threats were heard of *foreign intervention* on behalf of those “struggling for freedom!”

Friday evening passed, and no sign was seen from Dublin Castle. On Saturday the 7th October, Mr O'Connell and his companions of the Repeal Association met in council at the Corn Exchange, to concert measures which might be rendered necessary by any movement from the Castle, where the Privy Council reassembled early in the same morning. The morning wore away, leaving Mr O'Connell and his companions, in short, everybody in Dublin, on the very tenter-hooks of agitation and anxiety; and the impending crisis was undoubtedly fraught with the possibility of frightful results. An inflamed and half-maddened population was hurrying from all parts of Ireland, to attend a meeting which might at any moment be pronounced illegal, and prevented necessarily by bloodshed and slaughter. At length, at half-past three o'clock that afternoon, appeared a printed PROCLAMATION, prohibiting the meeting on the ensuing morning; and within an hour afterwards, a counter notice, couched in the language of a rival “Proclamation,” was issued by Mr O'Connell, imploring those who read it to abstain from attending the meeting, and to use their utmost exertions to prevent others from doing so. Desperate efforts were made by his emissaries to give effect to this mis-sive, and with success. The site of the intended meeting was pre-occupied by the military, and the awful consequences of a collision between

them and the innumerable dupes of designing demagogues were averted. During the ensuing week additional troops poured into Dublin, and overwhelming preparations were made against any outbreak. Every one then looked for the instant arrest of Mr O'Connell, and the leading members of the Repeal Association, on the charge of high treason, or at least sedition: it being alleged that Government had at length obtained sufficient evidence to justify such a procedure, and had waited no longer than till the moment of their becoming possessed of it, to act with decision. Owing to their overpowering demonstration of strength, and also to the incessant and passionate entreaties of Mr O'Connell, doubtless then feeling himself in mortal peril, no breach whatever of the peace occurred. Early in the ensuing week he received official intimation that he would be required to give bail to answer Informations for “conspiracy and other misdemeanours;” and on Saturday he was required to attend at the house of one of the judges, where he gave the requisite bail, and was then set at liberty; doubtless secretly overjoyed at finding himself rated no higher an offender than a misdemeanant.

The country justly reposed confidence in the consummate administrative ability, and the experienced sagacity, which distinguished the Government of that day; and the calm resolution with which Sir Robert Peel withstood the importunities of both Parliament and the public to adopt strong legislative and executive measures, in proud reliance on the energy of the common law to deal with the prodigious exigency which had risen, was truly admirable. “I am resolved,” was his memorable declaration, “to walk in the light of the constitution. If I find the law of the land incapable of dealing effectually with the case, I will not hesitate to ask for greater powers from the Legislature.” Would that a similar spirit had actuated him in every other subsequent State emergency! As soon as the course which he had resolved upon

had become known to the country, it occasioned intense anxiety. Had he thoroughly considered the nature of the proceedings on which so much thenceforth depended? Were his legal functionaries in Ireland equal to the occasion—one of almost unprecedented magnitude? Could a fair and firm jury be reasonably expected to be got together? And what a desperate evil would be a miscarriage! one likely to affect the tranquillity of Europe! What a prosecution! One against infuriate myriads, represented by nine men, the chief of whom had devised and developed the enormous confederacy, and was noted for his successful astuteness in baffling legal proceedings! But the Government had a first-rate Attorney and Solicitor-General, as well as experienced and very able legal subordinates; they did not despair of finding an honest, patriotic, and independent spirit in Irish jurymen; and felt “thrice armed” in having “their quarrel just.”

As soon as Mr O'Connell felt himself entangled in the meshes of the law, he issued earnest solicitations to the Irish people to violate “no law,”—not to be “guilty of any tumult or disturbance,” nor be “tempted to break the peace; but to act peaceably, quietly, and legally;”—and then, “the attempt upon *their liberties!* must fail.” Then he addressed himself to his personal difficulties, not magnanimously, but with a pettifogging pusillanimity calculated to wither the eagerest and fondest sympathy with misfortune. As for ourselves, the contrast between his previous mighty demonstrations, and his subsequent conduct under criminal prosecution, frequently brought to our recollection the lines of old Creech—

“That all may laugh to see that glaring light,
Which lately shone so fierce and bright,
End in a stink at last, and vanish into night!”

In this “monster prosecution” everything was on a commensurate scale. There were twenty-eight counsel engaged! The indictment filled fifty-eight closely-printed folio pages, having to deal, in distinct detail, with as many “overt acts,” in the

shape principally of seditious orations and documents, committed during the greater part of the year 1843. The grand jury took five days to consider whether they should find “a true bill.” The Attorney-General,* without throwing away a word, or wandering from his point for a moment, occupied eleven hours in opening the case. The counsel for the defendants, and Mr O'Connell himself, spoke for eight successive days! The Solicitor-General† occupied two days and five hours with his incomparable “reply;” and the Lord Chief-Justice's‡ luminous “charge” consumed a day and a half! The jury took only five hours to agree to their verdict of Guilty, and three or four more to adjust it to the eleven counts of the indictment; and finally, the trial lasted for nearly a month—namely, from the 16th of January to the 12th of February.

The interval between that day and the 30th of May was spent in desperate but fruitless efforts to obtain a new trial, and move in arrest of judgment; which was—a fine of £2000, and imprisonment for twelve calendar months. On the 14th June the defendants sued out a writ of error to the House of Lords. On the 7th September the appeal was allowed, judgment arrested, and the prisoners set at liberty! To adopt the terse account of Mr Townsend—“By a lucky combination of an *indictment* partly bad, a *verdict* partly bad, and a *judgment* partly bad, the prisoners escaped”—to the scandal of lawyers, and the amazement and chagrin of the country at large. We were among those who failed to perceive the convincing force of the reasonings which led to the reversal of judgment in this case; and we made the decision of the House of Lords the subject of an elaborate, dispassionate, and respectful examination in “Blackwood's Magazine,” in the ensuing month of November.§ We remain of that opinion,

* Now Sir T. B. C. Smith, Master of the Rolls, in Ireland.

† Mr Sergeant Green. ‡ Mr Pennefather.

§ The O'Connell Case—Was the Judgment rightly Reversed? No. cccxlix., pp. 539-560.

and adhere to the reasons for it there assigned. Let us, however, recur to the commencement of the proceedings, which were contested foot to foot, and inch by inch, with a kind of ludicrous desperation—with an unheard-of pertinacity. A brief enumeration will amuse even general readers.

First, The Informations, on reaching the accused, proved to have been sworn to by Mr Bond Hughes, a Government short-hand writer: a gentleman of unquestionable honour and veracity, who had been engaged officially to take notes of what was said at the various public meetings which led to the prosecution. He appeared publicly and avowedly in the capacity of Government reporter, treating others, and being treated, with uniform courtesy. He performed his harassing duties, as was ultimately acknowledged on all hands, with exemplary fidelity. But behold! The instant that the Informations fell under the lynx-eyed defendants and their friends and advisers, they discovered that Mr Hughes had made a mistake in including Richard Barrett, one of the prisoners, among those present at a meeting, and a dinner, on the 8th October; whereas it seemed that he really had not been at either. Upon this, Informations for wilful and corrupt perjury! were forthwith preferred against the luckless stenographer, "it being considered as a providential circumstance"—piously says one of the elaborate printed reports now before us—"that he should have thus tripped at the very outset!" Mr M'Donogh, Q.C., one of the counsel for the accused, attended before the magistrates to urge their reception of the Informations. They, however, recommended him to apply to the Commission; and the Commission refused to interfere. As soon, accordingly, as Mr Justice Burton had charged the grand jury, in the O'Connell case, on the first day of Michaelmas term, Mr M'Donogh, after the jury had retired, applied to the court for an order, in the nature of a Mandamus to the magistrates, compelling them to receive the Infor-

mations. On the ensuing day, various affidavits in support of the application were made by seven of the defendants; and on a subsequent day, Mr M'Donogh made another vigorous effort to obtain a Mandamus, but in vain—the court, however, giving him leave to prefer the charge to the grand jury, as soon as they should have disposed of the great matter then before them. No further proceedings, however, were attempted, and the cruel and absurd charge fell to the ground.

Secondly, While deliberating on the bill, the grand jury came into court, to ask that a mere clerical error in one of the counts—the name of "Tierney" being used by mistake for "Tyrrel"—should be altered by the officer of the court: an application quite a matter of course. It was, however, strongly opposed by the counsel for Tyrrel! but ultimately overruled, at the instance of the Attorney-General, on the obvious ground that, in such a stage of the proceedings, no third person could interfere between the Crown and the Grand Jury. At length they found a "true bill," on which it became in law an *Indictment*—but not before one of the grand jurors had exclaimed aloud, "I beg leave to express my dissent from that bill, as one of the jurors!"

Thirdly, On the defendants appearing in court, after the finding of the indictment, according to their recognisances, and being required by the Attorney-General, under statute 6 Geo. III. c. 4 § 1, to plead in four days' time, the counsel for the prisoners *seriatim* applied to the court to order that the four days should run, not from that moment, but only from the delivery of copies of the indictment. After considerable discussion, the Attorney-General waived the point, consenting to give copies of the indictment immediately, and to reckon the commencement of the four days from the ensuing one.

Fourthly, Application was made the next day for liberty to compare the copies of the indictment with the original, that the defendants, before pleading, might be assured of the cor-

rectness of such certified copies. The Lord Chief-Justice thought this a reasonable application, and granted it; and then it was demanded that the time to plead should run only from the time of delivering the *compared* copies.

Fifthly, Then was demanded a copy of the indorsements on the indictment, including *the names of the witnesses*, which was refused unanimously by the court, after full argument.

Sixthly, Next was demanded a copy of the *caption** of the indictment,—a point strongly urged by counsel in elaborate arguments, and decided in the negative by the majority of the court, Mr Justice Perrin dissenting. By this time the last day for pleading to the indictment had arrived, on which all the defendants, instead of pleading Not Guilty, handed in separate pleas *in abatement*—*i. e.*, dilatory pleas; on the ground that four witnesses before the grand jury had not been previously sworn *in open court*, according to statute 56 Geo. III. c. 87. The Attorney-General objected to the pleas being received at all at that stage, which was too late. The court, however, ruled otherwise, on which the Attorney-General handed in demurrers to the pleas, which were argued ably and elaborately on both sides. The court, in equally elaborate judgments, unanimously decided against the pleas in abatement.

Seventhly, The Attorney-General then required the defendants to plead *instantly*. This, again, was opposed very earnestly, but ineffectually; and at length, after ineffectual objections, the defendants were forced to hand in pleas of Not Guilty. But was the quiver of preliminary objections exhausted? Oh, no!

Eighthly, When the Attorney-General

* By the "caption" of an indictment, is meant merely the *style* or *preamble*, which is superadded to the indictment, when the whole record is ultimately made up in form. The caption is no part of the indictment; and, when this application was made, was notoriously not in existence. There was, in fact, no pretence whatever for the application, and we cannot appreciate the reason which induced the dissent of Mr Justice Perrin from the rest of the court.

ral moved to have a trial at bar, and to fix it for the 11th December, he was encountered by voluminous affidavits, and motions to postpone the trial till the 15th January, on the ground that the jury-lists, then deemed objectionable by the defendants, would by that time have been revised. The Attorney-General yielded, on which the defendants insisted on a further postponement till the 1st February. This, however, after argument, was refused, and the trial ordered to take place on the former day.

Ninthly, On the ensuing morning, it will scarcely be believed that a renewed application was made for a list of the names of the witnesses indorsed on the back of the indictment! Again the old question was elaborately argued, on professedly new grounds, on both sides, and again the judges delivered judgments *seriatim* as before, and with the like result. A rule was then obtained by the Attorney-General for a special jury.

The battle-field was now to be looked for in another quarter—the Recorder's Court; where the jury-lists to be in force during the ensuing year were to be made out,—or rather the existing one revised; the great struggle on the part of those representing the accused being to introduce the names of as many Roman Catholics as possible. The fight was furious for an entire fortnight!

Then the battle was transferred to the Crown Office on the 3d, 4th, and 5th January, where both parties, with their counsel, attended, for the purpose of "striking" the special jury—*i. e.*, reducing it to twenty-four names, by each party striking out one alternately; and the result was, as might have been expected, from the preponderating numbers of Protestants on the jury lists, that those twenty-four were such. The object of the Crown officers had been only the legitimate one, of rejecting all persons whom they had reason to believe disqualified for dispassionately acting as jurymen, from sharing the extreme political opinions of the defendants, on the subject of repealing the Union. At

the opening of Hilary Term, on the 12th January, occurred the next obstructive step of the defendants, which we shall call, resuming our series—

Tenthly, An application to quash the panel of special jurors, or to add twenty-seven names to it, omitted on the alleged ground of fraud or mistake. This, also, the court overruled unanimously. At length, on Monday the 15th January, came the day of trial. After no little delay and difficulty, owing partly to various of the proposed jurymen endeavouring to avoid the perilous and harassing responsibility prepared for them, twelve gentlemen were got into the box. But then, behold!

Eleventhly, a long, elaborate *challenge to the array*; being in substance the same as number ten, unanimously disposed of against the accused three days previously! The Attorney-General instantly demurred to the challenge, supporting his demurrer with great promptitude and cogency of learning and ability; the whole matter was elaborately argued; and at length the Attorney-General was again victorious; one of the judges, however (Mr Justice Perrin), doubtfully dissenting from the rest of the court. Thus was consumed the whole of the first day! On the ensuing morning, fresh efforts to get themselves excused were made by some of those called into the box; and when one of them alleged old age and bad health, it was interesting to witness the zeal with which his liability to serve was insisted on by the counsel for the accused, owing to the chance it afforded them of defeating the proceedings, by the jurymen's becoming unable to serve! They succeeded; and twelve jurymen having at length, after all this protracted struggle to prevent that "consummation devoutly to be" *deprecat*ed by the accused, been sworn, Mr Napier opened the pleadings, and Mr Attorney-General rose to state the case of the Crown. He performed his anxious and responsible duty admirably. What a position he must have felt to be his—with sixteen of his brethren, pen in hand, and ears

erect, noting every topic, every word that fell from him—each surcharged with eager professional rivalry, anxiety to defeat him, and fierce political antagonism! And the pens of thirty expert short-hand writers transferring to paper every syllable that he uttered—to be indelibly recorded, to be universally disseminated, and scrutinised with the eye of fierce and jealous malignity! If ever man, placed in a similar position, exhibited powerful and well-trained faculties, it was the Attorney-General, on that momentous and memorable occasion. In short, this learned gentleman from first to last exhibited a wonderful exactness, minuteness, and comprehensiveness of legal knowledge, and readiness in using it—indomitable resolution, and unflagging vigilance. He depicted in his opening address, steadily and patiently, in strong but true colouring, the colossal conspiracy which he had so boldly undertaken to demolish by the unaided energies of the common law, *and did demolish*; for, though a technical objection ultimately secured a reversal of the judgment, it left the legal, moral, substantial merits of the case untouched, and the efficacy of the common law completely vindicated. The Solicitor-General's reply for the Crown was an exquisite specimen of legal logic throughout—uniformly temperate, courteous, and convincing; exhibiting a marvellous mastery of the facts, and lucidity of arrangement. What a vivid contrast is exhibited between its severe simplicity and sobriety—its unwavering directness of purpose—and the impassioned, imaginative, excursive addresses of the eight counsel to whom he had to reply! Some of these addresses exhibited merit of a high order. Those of Mr Shiel and Mr Whiteside appear to us pre-eminent as displays of rhetorical power, with this distinction* between the two: that the former appeared almost designedly unconnected with the evidence—

* "How superior," says Mr Townsend (vol. ii. p. 515), "to the noisy gorgeous fireworks of Shiel, is the calm planetary light of the eloquent philosophical truths" enunciated by Mr Whiteside!

with the legal merits of the case; while the latter appears that of a well-trained, eloquent, and accomplished lawyer, addressing himself discreetly and ingeniously to those facts which were susceptible of being favourably presented to the jury; and diverting attention from those of a different description, by elegant, feeling, and sometimes very powerful declamation. Several portions of his speech appear to us to justify the extraordinary sensation called forth by the delivery of them. Incomparably the best speech, in a legal point of view, delivered on behalf of the accused, was that of Mr Henn, who was subtle, ingenious, plausible, and practical. If the intelligent jury were to be impressed favourably towards the prisoners, and desirous of seeing their way, according to law, towards an acquittal, Mr Henn went furthest in pointing out such a course to them. Towards the close of his address he disclaimed, with a quaint excess of modesty, the possession of intellect enough to discharge his duties. "I am not gifted with an intellect which would enable me to grasp the vast variety of facts, and the mass of evidence which has been laid before you in the case!"

Mr O'Connell's address was temperate and tame—disappointing all who have read it, as we understand was the case with those who heard it: a mere repetition of the topics which he had been in the habit of urging in Parliament and in public meetings, in favour of the repeal of the Union. He thus concluded:—"I leave the case to you; I deny that there is anything in it to stain me with a conspiracy; I reject with contempt the appellation. I have acted in the open day, in the presence of the Government, in the presence of the magistrates; nothing was secret, private, or concealed; there was nothing but what was exposed to the universal world." This sophism was thus conclusively disposed of by the Lord Chief-Justice (Mr Pennefather, one of the ablest lawyers that ever sat on the Irish bench):—"Gentlemen, it is a mistake in law to say, that in order to estab-

lish conspiracy, it is necessary to prove the existence either of *treachery* or of *secrecy*, in order to complete this charge. I do not mean to say, but rather the contrary, that very often both treachery and secrecy do not concur in the existence of various conspiracies; they are cognate to such an offence; but I deny altogether that it is the law of this country that the existence of one or other of such ingredients should be proved, in order to constitute the crime of conspiracy. Secrecy is very often involved in it; but, in my opinion, and so I put it to you, it is not a necessary ingredient in the charge of conspiracy. Nay, more, if secrecy were a necessary ingredient in the crime of conspiracy, the present alleged conspiracy might have been carried on from its beginning to its final consummation, and the parties could never have been stopped in their progress, or charged with a crime of that nature."*

The summing-up of the Lord Chief-Justice was admirable throughout. Nothing could exceed the simplicity and accuracy with which he presented to the jury the true points of the bewildering complication of facts and reasoning with which they had been occupied so long. His own impressions of the case being strong and decisive, he presented them with unhesitating boldness and decision to the jury, without, at the same time, invading their province, or seeking to confuse its confines. The attempt subsequently made to impugn his impartiality, on the strength of a single ambiguous expression, "*the gentlemen of the other side*," [when speaking of the counsel for the accused], was contemptible: it was one, justly observes Mr Townsend, "which a gesture, a nod of the head, or motion with the hand, might at once explain." The jury, after publicly expressing their embarrassment by the number and complexity of the issues which had been submitted to them—but

* We quote, as in all the other references to this trial, the separate Report of it, by Messrs Armstrong and Shirley (members of the Irish Bar), in 1844, pp. 308-9.

which, we think, were presented as satisfactorily as the nature of the case would admit—returned a verdict of Guilty against *all* the defendants, on the last eight of the eleven counts of the indictment; against three of the defendants, including Daniel O'Connell, on the third count, and part of the first and second counts; and against four other of the defendants on parts of the first, second, and third counts. Had a verdict of Not Guilty been entered on those counts and parts of counts, in accordance with the real verdict of the jury, "all that exercise of forensic ingenuity," says Mr Townsend, "which afterwards perplexed the judges and divided the law lords, would have been stayed. *Sed Dis aliter visum!*" Suffice it, for our present purpose, to say, that the judgment pronounced by the Irish Court of Queen's Bench was subsequently reversed by the decision of a majority of one—that is, of three judicial peers against two:—the minority being supported by the overwhelming majority of the judges who had been called in to advise them, and only two† of whom had expressed the opinions subsequently adopted by the majority of the judicial peers. This judgment was arrested, however, on only *one point*; one arising necessarily after all the proceedings in the Irish courts had been completed, and founded on a mere matter of form, viz., the mode of entering the verdict on the record, and which was done, in conformity with the universally-understood practice, for a century and a half, in both the English and Irish courts!

This technical objection, of extreme shadowy tenuity, was suggested by the eminent English lawyers, Sir Thomas Wilde (since Lord Truro), Sir Fitzroy Kelly, Mr Peacock,‡ and the late Mr John William

Smith. The point was this. Some of the eleven counts were bad in point of law, and others good; and instead of entering the verdict "guilty" and "not guilty" on the counts respectively applicable to the verdict, the verdict was entered *generally* "guilty;" and the formal entry of the sentence was "for *his offences* aforesaid"—which, looking only at the formal entry on the record, *might* be taken to indicate that the judge had been influenced, in awarding sentence, by bad as well as good counts! All the law lords, and all the judges, including the minority of two, were avowedly taken by surprise, when this objection was started at the bar of the House of Lords; it had never been thought or heard of before; but it prevailed—and the prisoners were set at liberty, after having been confined, but very pleasantly, and with an extraordinary measure of indulgence, for three months. To prevent the recurrence of such a hardship as carrying into effect a sentence, in case of misdemeanour, pending a writ of error, a statute was passed (8 & 9 Vict. c. 68) in the ensuing session, "to stay execution of judgment for misdemeanours, upon the parties giving bail in error,"—a just remedial measure for an admitted wrong. Though the defendants were thus restored to their liberty, and relieved from the payment of fines, and the finding of securities for their good behaviour, and so far the result of this State Trial was nugatory, it was in reality most potent. It crushed the conspiracy at which it had been aimed; and demonstrated, in a way not to be misunderstood, and with resources not to be foolishly hereafter undervalued, what the law can do again. The bubble of "Repeal" burst; and no one has been able to blow another. The arch-conspirator, Daniel O'Connell, received a blow from which he never recovered. He lost ground irrevocably in the estimation of his once credulous fellow-countrymen; though he affected, such was the hard necessity of the condition which he had imposed upon himself, to have still at heart the

* The late Lords Cottenham and Denman, and Lord Campbell, against the then Lord Chancellor Lyndhurst and Lord Brougham.

† Mr Baron Parke, and the late Mr Justice Coltman.

‡ Now [1854] the Fourth Member of the Legislative Council, in India. It was this gentleman who had suggested the point.

repeal of the Union, and made sickly and puny efforts to show that he was in earnest, and that success in the insane project was possible. He died not long afterwards; wherefore we shall say no more about him.

The only other Irish trial in Mr Townsend's collection, is that of William Smith O'Brien, in the autumn of 1848, for high treason. The occurrences which led to it, however, are too recent, and the course, incidents, and result of the trial too fresh in recollection, to admit of our dwelling upon it at any length. His conduct from first to last was calculated to excite emotions only of pity, contempt, and disgust; and while no one could entertain the slightest feelings of sympathy with him, it cannot be denied that, in his brief absurd campaign of treason, he showed personally a sense of gentlemanly feeling, of truth, and honour, which leads one to attribute his conduct, in a considerable measure, to intellectual deficiency. He seems to have been unable to see the absurdity of his schemes, or appreciate the personal risk he was running, and the moral enormity of his conduct. The country acted wisely, and with dignity, in exhibiting a contemptuous clemency in forbearing to take the life which he had so clearly forfeited. He had been taken in the very act of high treason—an act unequivocal and glaring, of literally "*levying war* against our lady the Queen, in her realm;" and his counsel must have been, indeed, at his wits' end to discover topics which might be urged on the jury without insulting their understanding. He adopted the only line open to him, and which was taken in Frost's case, as we explained in the first of these articles*—viz., to assert that the prisoner's object was not of a *general*, but a special and limited character—to effect, not a public national purpose, but a personal and selfish one. "This," observes Mr Townsend, graphically, "was the narrow ridge, scarcely sufficient for the foot to rest on; the frail,

slight, rickety plank over a yawning abyss, by which alone his counsel could hope to extricate their client; but his own speeches, letters, and acts, rendered even this method of escape—rather, by-the-by, an ignoble one—perfectly hopeless." The same desperate efforts were made by counsel, as in the cases of Frost and O'Connell, to secure the prisoner's escape by means of technical objections: applications to postpone the trial for non-delivery of lists of jurors and witnesses; a plea in abatement, founded on the same objection; a challenge to the array, on the ground of partiality in the sheriff—a charge, it need hardly be said, utterly groundless; and a claim to thirty-five peremptory challenges to the jury, according to the common law of England—a claim of course overruled. All, however, was ineffectual—as also was a subsequent writ of error to the House of Lords, argued with pertinacious zeal by four counsel. Sentence of death—the death of a traitor—was passed upon the prisoner; and on hearing that her Majesty had been graciously pleased to spare his life, on condition of his being transported for life,† this impracticable traitor positively argued that the Queen had no power to exercise this act of mercy! That her Majesty, however, had such a power, no lawyer doubted; but, to obviate all possible doubt on the subject, a declaratory act was immediately passed (Stat. 12 and 13 Vict. c. 27), entitled, "An Act to remove doubts concerning the transportation of offenders under judgment of death, to whom mercy may be extended, in Ireland."

We have little to remark on the conduct of this trial, as reported by Mr Townsend. We concur with him in saying, that it "combines the different elements of peculiarity" which distinguished the trial of O'Connell and his companions, and "all Irish State Trials." He forms a very different estimate of the merits of the

† Mr O'Brien has just [1854] received a pardon, conditional on his not returning to the United Kingdom; and is now on the Continent.

* *Ante*, p. 285.

addresses of counsel in this case. That of the Attorney-General, Mr Monaghan, "is a dry detail of most [un]interesting facts, unrelieved by style, and unadorned by a single grace of elocution;" while Mr Whiteside, for the defence, "redeemed the forensic honour of his country, and struck a key-note of national pathos which must have vibrated through the hearts of his hearers."

Before quitting this branch of the subject, we beg to express our opinion that these Irish trials, but especially that of O'Connell and his companions, exhibit the Irish Bar in a very distinguished position in respect of their legal acquirements, and their prompt ability in applying these acquirements, as the exigencies of their cases demanded. Nor do we find any cause for censure in their repeated and strenuous efforts to defeat the cases against their clients, by availing themselves of every technical objection which could occur to skilful and practised lawyers. It was their bounden duty to do so—as was done by their English brethren in the case of Frost, and ought always to be done on behalf of clients who have intrusted their lives and liberties to their counsel, and rightfully insist on their seeing that the forms of law are in every respect strictly complied with. None but the most stupidly ignorant can deny the existence, or complain of the exercise of this right. "Technical objections," as they are called, are on such occasions only so many evidences of the existence of those time-hallowed and inestimable rules which secure the very existence of civil liberty, and constitute the essence of an enlightened and free jurisprudence. Let any one of our readers imagine *himself* in the position of an accused, being tried for a capital or any other serious offence—with his life, his honour, his liberty at stake, and believing himself the victim of an unjust accusation: what would *he* think of his counsel waiving all "technical objections?" He would accuse that counsel of ignorance, imbecility, or even collusion and corruption.

We think that the slight specimens

which alone we have been able to give, in this brief series, of the mode of conducting criminal trials in England, Scotland, and Ireland, are such as reflect credit on the mode of administering criminal jurisprudence in this kingdom. As amongst ourselves, we can perceive peculiar excellences and peculiar defects in each of the three branches of legal practitioners; but all are distinguished by reverence for THE LAW OF THE LAND, and its judicial exponents; courtesy towards each other; and a vigilant, stern, and fearless spirit in guarding the liberty of the subject, when that liberty is in any degree endangered in the person of even the humblest fellow-subject, and on apparently the most trivial occasions.

It was our intention to have included in this paper a sketch of a great American trial for murder—that of the late Professor Webster, for the murder of Dr Parkman: a fearful occurrence—a black and dismal tragedy from beginning to end, exhibiting most remarkable indications, as it appears to us, of that overruling Providence which sometimes sees fit to allow its awful agency in human affairs to become visible to us. We have, however, now concluded the present series; but it is not impossible that we may take an early opportunity of giving some account of this extraordinary case, of which, even while we are writing, a Report has been courteously transmitted to us from America. All we shall at present say on the subject is, that the reply of Mr Clifford, for the prosecution, cannot be excelled in close and conclusive reasoning, conveyed in language equally elegant and forcible. Its effect, as a demonstration of the guilt of the accused, is fearful.

NOTE.

A somewhat curious coincidence was connected with the receipt of the "Report" mentioned at the close of the preceding article. The latter was

written in the month of May 1851; and the trial of Professor Webster had commenced on the 19th March 1850, and his execution occurred on the 30th of the ensuing August. The Author had made many ineffectual efforts to obtain an authentic report of the trial, in order to present an account of it in the concluding paper of the Series. Immediately after penning the paragraph in the text intimating this intention, he left home to make another effort, but in vain. On returning, however, to his chambers, he found a gentleman waiting his arrival, who introduced himself as the Rev. Dr Choules from the United States of America, and a friend of the Honourable J. H. Clifford, the Attorney-General of Massachusetts, "who had conducted the recent prosecution for murder against Dr Webster." Dr Choules then presented to the Author a large octavo volume, with numerous plates and fac-similes, entitled, "Report of the Case of John W. Webster, by George Bemis," (the junior counsel for the prosecution). The fly-leaf bore the words following:—

"To the Author of the * * * Series of Articles in 'Blackwood's Magazine,' entitled 'Modern State Trials,' with the best respects of John H. Clifford, Attorney-General of Massachusetts, New Bedford.

"Mass., U.S.A., March 17, 1851.

"Forwarded through the kindness of the Rev. Dr Choules of Newport, R. I."

Both these gentlemen were personally strangers to the Author; nor does he know how they came to identify him with the "Series of Articles" which were then appearing in "Blackwood's Magazine." He begs to take this opportunity of returning cordial thanks to the Attorney-General of Massachusetts, for his courtesy and kindness: and of emphatically repeating the opinion, that while his conduct of the entire case was marked by great ability and discretion, his reply appears to the Author as clear and cogent as any that ever came under his notice.

It was only the pressure of his engagements that prevented the Author's fulfilling an intention, not yet definitively abandoned, of presenting to the readers of "Blackwood's Magazine" a careful account of this great American trial. The circumstances attending the murder are invested with enthralling interest; and it has, to the eye of the moralist, some very hideous features. The efforts made by the prisoner—a man of intellect, learning, and high professional station—to avert suspicion, and escape from the awful consequences of crime, are positively sickening to read of. His idiosyncrasy, also, is a psychological study: and the net-work of circumstantial evidence in which he became inextricably enmeshed, will be regarded with watchful interest alike by lay and professional readers.

THE MARTYR PATRIOTS:

(LIVY, BOOK XXVI. CHAPS. 13, 14.)

A A POEM WHICH GAINED THE PRIZE FOR ENGLISH VERSE IN THE SENIOR HUMANITY CLASS OF THE UNIVERSITY OF EDINBURGH, SESSION 1827-8.

"Dulce et decorum est pro patria mori!"

'Tis sultry noon, Hesperia!—and the sun
Sits gleaming like a monarch on his throne ;
Unfurls his dazzling standard in the sky,
And scatters living lustre from his eye ;
Each fleecy cloud is bathed in golden light,
And, melting in the sunbeams, sinks from sight.
Yet, though serene and peaceful all on high,
Far other scenes, at Capua, meet the eye ;
There, second Rome ! thy glory's sun is set,
Thy fortunes darken at the frown of fate ;
Ambition, blighted, marks thee for decay :
For Rome can bear no rival of her sway !

Not Hannibal's strong arm avails thee now,
Defeat o'erclouds with shame his iron brow :
Baffled he quits with sullen ire thy wall,
To wreak his vengeance on the Capitol.
He leaves thee, Capua, to thy furious foes,
Oppress'd and fainting 'neath impending woes.
Wasted by ills without allay or cure,
All hope cut off,—destruction seal'd and sure !

Crouching, like tigers, ere they seize their prey,
Rome's lowering legions round that city lay ;
Each warrior's heart thick throbb'd with fierce delight
While flamed his falchion in the sunbeam bright ;
While glanced his warlike eye, with eager pride,
O'er dense battalions ranged on every side,
While thundering rams assault the crashing wall,
And catapults their stony showers let fall.
Wild uproar all without, and deadly din,
Yet wilder uproars raged uncheck'd within ;
Grief—wrath—despair—confusion—all combined
To shake and terrify each troubled mind ;
Fierce clamorous outcries yell'd from every street,
And drove calm Legislation from her seat.

Lo ! trembling rulers quit the helm of state,
 And sternly wait at home their country's fate
 Deaf are the nobles to their people's calls,
 Quailing in silence 'mid their marbled halls.
 Ah ! where is Wisdom now, or Valour where,
 To check rebellion, or to soothe despair ?
 A thousand voices thousand schemes propose,
 In vain attempt to mitigate their woes ;
 Wives—mothers—children—weep with ceaseless wail ;
 Reproachful thousands at their rulers rail,
 Point to the senate-house untenanted,
 And call down curses on each recreant head ;
 Till, maddening with their rage, they loudly swear
 To drag from home each lurking senator.

Once more, thus urged, the unwilling Fathers meet,
 And each resumes his long forsaken seat ;
 But now no noise of turbulent debate ;
 Each, fill'd with voiceless anguish, silent sate ;
 Their only eloquence a tearful sigh,
 Lost in the echo of their people's cry.
 Each at the other mournful glances cast,
 Big with the bitterness of sorrows past,
 And dire forebodings of yet coming woes,
 Which mortal might may fruitlessly oppose :
 Ah ! wretched remnant of a ruin'd state,
 Striving in vain to rise above your fate—
 A state, alas ! with nothing but the name—
 Sad smould'ring emblems of expiring flame !

Slow, 'mid the silence, rose a senator,
 His pale brow furrow'd with corroding care ;
 His manly bosom heaved the smother'd sigh,
 While round his comrades glanced his gloomy eye.
 Though melancholy majesty was there,
 That once bright eye was dimm'd by deep despair.
 As glares the eagle, of her young despoil'd,
 Or lowering lion, of his victim foil'd,
 So Virrius look'd with stern composure round,
 On the full senate, sunk in grief profound :
 Hush'd was each voice, each head expectant bow'd,
 Like breathless nature 'neath the thunder cloud.
 "Speak ye of yielding, Fathers, or of peace ?
 Are such the thoughts your timorous breasts that please ?
 Think ye, aside her fury laid, that Rome
 Will leave us, rebels, to enjoy our home ?
 Think ye her bosom melts with mercy yet ?
 Can she so soon her wrongs forgive, forget,
 Unmindful of the blood our swords have shed,
 And yonder trenches fill'd with Roman dead ?
 We, who have join'd our cause with Hannibal,
 And driven him headlong to her Capitol,

How can we hope her pardon yet to gain ?
 Fathers, that hope is frivolous and vain !
 To former deeds your eye reverted turn,
 If ye her deadly purpose would discern.
 When Italy a foreign foe o'erspread,
 And dreaded, hated Hannibal their head ;
 Heedless of him—of them—of aught beside,
 To Capua's walls her vengeful legions hied.
 Harass'd with famine, death, and every ill,
 Firm to their purpose, here they linger still.
 Though furious Hannibal assault their rear,
 See still their dense battalions thronging near !
 Pass'd the Vulturnus o'er, he fires the plains—
 Not this from Capua's walls their force detains !
 To their own Capitol his footsteps turn—
 But lo, they laugh the menaced siege to scorn !
 His standards flash beneath her very gate—
 Here—at our walls—her consuls linger yet !
 The lion for his young will bleed and die,
 But Rome, infuriate, scorns her children's cry :
 Their virgins, wives, and infants, weep in vain—
 Their altars, temples, tombs, unwatch'd remain :
 So fix'd to wreak their vengeance on our head,
 And such their quenchless thirst of Capuan blood !
 “ How shall we grapple with such deadly foes ?
 How brave this torrent of o'erwhelming woes ?
 Say, Fathers, whither shall we look for aid ?
 Where are the spirits of our mighty dead ?
 Is there no god to bare for us his arm,
 And from the clouds display his awful form—
 Hurl the hot thunder from his reddening hand.*
 And flash fierce lightnings o'er yon cruel band ?
 Alas ! such aid we may not hope to see—
 The gods have left us to our misery !
 But, Fathers, cease to murmur at your doom,
 There still is left an honourable tomb !
 This grief-worn trunk shall never live to hear
 Each scornful Roman's bitter taunt and jeer :
 Yon haughty consuls never will I see
 Exulting in ensanguined victory :
 Never these limbs shall Roman fetters bind,
 Dragg'd infamous the conqueror's car behind :
 Nor shall these eyes behold their prison's gloom,
 To wait in cold suspense a rebel's doom ;
 Ne'er writhe this back the blood-stain'd scourge beneath,
 Ere summon'd forth to meet a shameful death :
 Ne'er on this neck shall murderous axe descend ;
 They shall not break the soul they could not bend !
 —Think ye these eyes shall see my country's fall,

* “—— rubente dextera.”—HOR. Od. i. 2, 3.

Perish our lives, our liberties, our all ?—
 —Say, Fathers, can ye nobly dare to die,
 Ere scenes so frightful meet your anguish'd eye ?
 For such as shrink not from a glorious end,
 My tables now beneath a banquet bend :
 One solemn cup our final feast shall close,
 Oblivious antidote for all our woes :
 In peaceful slumber seal our wearied eyes,
 Reposing far beyond our enemies !
 One funeral fire our bodies shall consume,
 And Heaven's own emblem* grace our noble doom :
 So shall we all from every ill be freed,
 And even our foes applaud the manly deed ;
 And Hannibal shall learn, too late, to prize
 His brave, forsaken, and betray'd allies ! ”
 Thus Virrius with unfaltering firmness spoke,
 While not a sound the mournful silence broke :
 Despair sate frowning on each gloomy brow,
 Mingled with deep excitement's feverish glow.
 His dread proposal gain'd applause from all,
 But few had soul to answer to the call :
 Some spoke of embassies, and some of peace,
 Convinced that Rome would soon her fury cease :
 Some silent sate in black despondency,
 Lost and absorbed in speechless agony :
 A steady few obey'd the stirring call,
 And follow'd Virrius to his banquet hall.

'Twas eve—still eve ; and in the western sky
 The sun in slumber veil'd his glorious eye,
 Though still the clouds his lingering lustre tinged,
 Flush'd with rich crimson, and with silver fringed :
 All nature's scenes serenely silent lay,
 As though they sorrow'd for the parting day.
 On Capua's walls a mournful light was shed,
 As gilds a smile the features of the dead :
 A beam of parting splendour—sad, though bright,
 Doom'd soon to fade before a woeful night ;
 A night, O Capua, on thy towers to fall,
 Obscuring life, and liberty, and all !

Faint sunshine smiled upon a banquet hall,
 Where sate, expectant of their country's fall,
 Stern Virrius, and his fellow-senators ;
 No festive mirth, no wild carousal theirs !
 A costly funeral feast the tables press'd,
 The funeral feast of every death-doom'd guest ;
 Rich golden goblets of Etrurian shape
 Sparkled with vintage of Falernian grape.
 With fever'd lips the luscious draught they quaff.

* — πῦρ, τὸ τοῦ θείου σύμβολον ἀγώτατον.

But follows not the loud light-hearted laugh !
 Its generous fumes each maddening brain excite,
 And fill each eye with wild unnatural light.
 Far other cup their mournful feast shall close,
 Shedding forgetfulness and grim repose !
 Deep, dark, and deadly as the Stygian stream,
 Can draught like this such gorgeous cup beseem ?
 Mantles no blush its lurid surface o'er ?
 Oh, that such cup should stand such guests before !
 Hush'd is each whisper, fix'd each languid eye ;
 Labours each bosom with the bursting sigh :
 Each hectic cheek assumes an ashy hue,
 Each brow is damp with drops of clammy dew :
 Dim glistens on the board that ghastly cup :
 Is there a hand that dares to take it up ?
 —Slowly outstretch'd is Virrius' steady arm ;
 With him no quivering muscle told alarm !
 To his cold lips he raised the fatal draught,
 And of its dread contents he calmly quaff'd :
 To each the cup in dreary silence pass'd,
 Till drain'd it to its deepest dregs, the last !
 Lock'd hand in hand—in one last fond embrace,
 Each gazing on the other's dying face,
 For Capua gush'd their unavailing tears,
 Though far, themselves, beyond its ills and fears !

Brightly and beautifully dawn'd the day,
 Melting the early dews and mists away :
 And gleams of trembling sunlight pierced a room,
 Shrouded in dreary and unnatural gloom :
 A sepulchre ! with festive emblems spread !
 Here, glittering cups, and there, the newly dead !
 Here, burnt dim lamps with livid flickering ray,
 As if in mockery of the rising day ;
 There, round rich viands sate a ghastly band,
 Conjoin'd in rigid grasp each bloodless hand :
 On each damp brow close clung the matted hair,
 Shading the livid eye's unearthly stare :
 Their lips with crimson foam were crested o'er,
 Cold as the spray on ocean's surfy shore ! *
 No sound was heard within that dreary room,
 But all was silent as the mould'ring tomb !
 Ah, little reck'd the bright eye of the sun
 The fearful sight he rose to look upon ;
 The forms he flung his golden radiance o'er,
 The eyes that gladden'd in his beams no more !
 —There, Capua ! there, thy ruin'd greatness lay !
 Well mightst thou weep in tears of blood that day !

* * "And the foam of his gasping lay white on the turf,
 But cold as the spray of the rock-beating surf."—BYRON.

—But hark ! the crash of yonder mailed throng,
Which stately Roman consuls lead along :
The thundering tramp of prancing cavalry,
That shakes thy streets and walls, no longer free !
Hark ! to the clangour of their martial peal,
See the fierce flashing of their burnish'd steel !
See how their standards flout the morning air,
While waves his silver plumes the Eagle there !
Ay !—triumph, Romans, o'er your prostrate foe :
Your might hath laid, at last, your rival low !
—Wave—wave your banners o'er her conquer'd walls,
And feast your troops in her deserted halls !
Summon her senators to meet their doom,
And bid your lictors with their axes come !
Speak with a voice the slumbering dead may hear :
Bid martyr'd Virrius at your call appear :
Start from the ashes of his funeral pyre,
With all his fellows in their robes of fire ;
Then let your legions quail before his eye,
Whose noble soul disdain'd your tyranny,
Sublimely triumph'd o'er the ills of fate,
And fell, the last prop of a falling state !

SPECULATORS AMONG THE STARS.*

"Whatever we talk, things are *as they are* ; not as we grant, dispute, or hope : depending on neither OUR affirmative, nor negative, but upon the rate and value which God sets upon things."—JEREMY TAYLOR.†

LET us imagine one of our species, at an early period of its history, destitute of any artificial aid to the sense of sight, contemplating the aspect of things around him.

He perceives that, somehow or other, he lives upon a Something, apparently a flat surface, of indefinite extent in all directions from the spot where he stands, consisting of land and water, alternately visited with light and darkness, heat and cold ; with a regular succession of seasons, somehow or other connected with the growth of vegetables of various kinds, suitable and unsuitable for his purposes, with beautiful flowers and magnificent forests : while the air, water, and earth, teem with insects, birds, fishes, and animals, which seem almost altogether at his command. There are also winds, dews, showers, mists, frost, snow, hail, thunderstorms, volcanoes, and earthquakes. He himself, equally with the vegetables and animals, passes through divers gradations, from birth to decay—from life to death : but during life, alike with the animals, alternately sleeping and waking, subject to vicissitudes of pain and pleasure, of health and disease ;—but apparently, unlike them, capable of mental action of a high order, and moral feeling.

If he look beyond the locality on

which all this takes place, he beholds a blazing body alternately visible and invisible, at regular intervals, and to which he attributes both light and heat ; another luminous body brightly visible only at night, which it gently illuminates ; and both these objects are occasionally subject to brief but portentous obscurations. During the night there also appear a great number of glittering white specks in the blue distance, which he calls stars ; all he knows of them being, that they are beautiful objects in the dark ; even contributing a little light, in the absence of the moon. Why, and how, he himself, and all these things, came to be as they are, he knows no more than the bird that is blithely carolling on the branch above him, but for a certain Book, which tells him that God ALMIGHTY made him, and everything he sees about him ; the sun, the moon, the stars, the earth, with all the arrangements securing night and day, light and darkness, seasons, days, and years ; forming *him*, in HIS IMAGE ; giving him the earth for a dwelling, and dominion over everything that lives and breathes in it ; adapting it exactly to his capacities and necessities, with countless arrangements for affording him happiness ; and commanding him to be obedient to the will of his Maker.

* *Blackwood's Magazine*, September and October, 1854.

"*Of the Plurality of Worlds : an Essay. Also a Dialogue on the same subject.* Second Edition. Parker and Son, 1854." A third has since appeared, but we quote from the second.

"*More Worlds than One, the Creed of the Philosopher, and the Hope of the Christian.* By Sir DAVID BREWSTER, K.H., D.C.L. Murray, 1854." Another Edition has since appeared, but we quote from the former one.

"*The Planets : Are they Inhabited Worlds ?* Museum of Science and Art. By DIONYSIUS LARDNER, D.C.L., Chapters i., ii., iii., iv. Vols. i., ii., iii. Walton and Maberly, 1854."

† Works, vol. xi. p. 198. (Bishop Heber's Edition.)

That the first Man and Woman placed on the earth became, nevertheless, almost immediately disobedient; whereby they incurred the anger of God, and their position became woefully changed for the worse. That God, nevertheless, loved man, formed in His own image, after His likeness, with such tenderness, that He devised means for his restoration, if he chose, to the favour which he had forfeited; and Himself visited the earth, vouchsafing to assume the form of that being whom He had *created in His image*; submitted to mockery, suffering, and death, on his behalf; rose again, and returned to heaven with the very body which he had assumed on earth. That though man's body must die and decay, equally with that of every animal, his shall rise again, and be re-joined by its spirit, to stand before the judgment-seat of God, to be judged in respect of the deeds done in the body, and be eternally miserable or happy, according to the righteous judgment then pronounced. This Book, moreover, tells him, with reference to the locality in which he exists, that all things shall not always remain as they are; but that the earth, and all that is in it, shall be burned up; that it, and the heaven, shall pass away with a great noise; that the elements shall melt with fervent heat; and that for those on whom a favourable doom shall have been pronounced in the day of judgment, there shall be a new heaven, and a new earth, wherein dwelleth righteousness. Believing all this, and his inner nature telling him that the law of action laid down in the Book is righteous, and exactly conformable to that nature, he endeavours to regulate his conduct by it, and dies, as dies generation after generation of his species, in calm and happy reliance on the Truth of that Book.

Agas pass away, and vast discoveries appear to be made, by the exercise of man's own thought and ingenuity, independently of any revelations contained in his Great Book. Whereas he had thought the earth stationary, he now finds it, the sun,

and the moon, to be round bodies, each turning round on its own axis,—the earth once in twenty-four hours; that the earth also goes round the sun once in every year, the moon accompanying it, and at the same time turning round it once in every month; and that these are the means by which are caused light and darkness, night and day, heat and cold, and the various changes of the seasons! The stars, however, remain twinkling, the mere bright specks they ever appeared.

Let us now suppose our thoughtful observer's sight assisted by the aid of glass, in two ways: so as to place him, on the one hand, nearer to distant objects, and on the other, reveal objects close to him, the existence of which he had never suspected. In the latter case, his microscope exhibits an astounding spectacle: almost every atom turned, as it were, into a world, peopled with exquisitely-organised animal forms, adapted perfectly to the elements in which they are seen disporting themselves. In the former case, his telescope makes equally amazing revelations in an opposite direction. The heavens are swarming with splendid structures unseen to the naked eye: new planets are visible: others with rings, belts, and moons: and the stars seem to be resplendent suns, the centres of so many systems peopling infinitude; and these, moreover, obeying laws of motion the same as those existing in the system of which the earth forms part!

Well, says our overwhelmed observer, it is certainly late in the day to make these sublime and awful discoveries; but here they are, unless my instruments play me false, so that I am the victim of mere optical delusion; the boundless, numberless realms of insect life being only imaginary; and the stars really no suns or worlds at all, but simply the glittering spots, existing for purposes utterly inconceivable by me, which alone mankind has hitherto believed them. But if my telescope tell me truly, the little speck on which I live, is, in fact, but a grain of dust in the heavens, circling obscurely round a sun, itself a mere

star, perhaps eclipsed in splendour by every other star in existence, each probably containing many more and greater planets circling about it than has our sun!

And about these matters **THE BOOK** is silent!

Pondering these discoveries, and assuming them to be real, our observer echoes the inquiry of our greatest living astronomer—"Now, *for what purpose* are we to suppose such magnificent bodies scattered through the abyss of space?"* And at length the grander one occurs—Are there human beings, or beings similar to myself, anywhere else than on this earth? On the sun, moon, planets, and their satellites? Nay, on all the other inconceivably numerous suns, planets, and satellites, in existence? He pauses, as though in a spasm of awe. But he may next, and rationally, ask, If it be so, *how does all this affect me?* Has it any practical bearing on the condition of a denizen of this earth?

If our bewildered inquirer unfortunately had at his elbow Thomas Paine, he would hear this blasphemous whisper: "The system of a plurality of worlds renders **THE CHRISTIAN FAITH** at once little and ridiculous, and scatters it in the mind, like feathers in the air. The two beliefs cannot be held together in the same mind; and he who thinks he believes both, has thought but little of either."† By this impious drivel is meant, that if this infinitude of systems be made by one God, who has peopled every orb as our own is peopled, with rational and moral inhabitants, it is absurd to suppose that He can have such a special regard for us, as the Scriptures assure us He has: that *He was made flesh, and dwelt among us*: lived with us, died for us, rose again for us; us, the insignificant occupants of this insignificant speck amidst the resplendent magnificence of the infinite universe!

Now, that such a notion is equally irreligious and unphilosophical, we

trust no intelligent reader of ours requires to be persuaded; but that there are both friends and enemies of the Christian Faith, who respectively fear or believe otherwise, may be assumed; and hence the importance of viewing the matter soberly, by such light as we have,—as God has been pleased to vouchsafe to us. If we have little, we cannot help ourselves, but must gratefully and reverently make the best use we can of it; assuring ourselves that there must be wise reasons for our omniscient Creator's having given us just as much light and means of knowledge as we have, and no more. He might have endowed us with faculties nearly akin to His own; He might have given us no more intelligence than the brutes that perish: but He has thought proper to act otherwise.

The attention of scientific persons, and those of a speculative character in religion, physics, and morals, has recently been recalled to the question, whether there are grounds for believing the heavenly bodies to be the habitations of rational beings, by the publication, eleven months ago, of a thin octavo volume of 279 pages, bearing no author's name, and modestly entitled, "Of the Plurality of Worlds: an Essay." Internal evidence, however, seemed to point to a distinguished person at Cambridge as the author; a gentleman of great eminence as a mathematician, a logician, a divine, and a moralist—in short, to the Reverend Dr Whewell, the Master of Trinity College. The work was divided into numbered paragraphs, as is usual with that gentleman; peculiarities of spelling—*e. g.*, "offense," instead of "offence"—and of style and expression, are common to the *Essay* and the other works of the suspected author. We are not aware that up to the present time he has repudiated the work thus attributed to him. On the contrary, the author has just published a *Dialogue*, by way of supplement to it, in which he and various classes of objectors are speakers; and on one of them telling him that one of his critics "repeatedly tries to con-

* **HERSCH.**, *Astron.*, sec. 592.—[We quote from the first edition.]

† *Age of Reason.*

nect his speculations with those of the author of 'Vestiges of Creation,'—a wild work of an infidel character,—he answers, "If he were to try to connect me with an *answer* to that work, which went through two editions, under the title of 'Indications of the Creator,' he would be nearer the mark; at least, I adopt the sentiments of this latter book." Now, this latter book was published, certainly not with Dr Whewell's name on the title-page, but by the publisher of all his other works, and entitled, "Indications of the Creator: Theological Extracts from Dr Whewell's History and Philosophy of Inductive Science." But whereas the Essay now before us is written by the present highly-gifted Master of Trinity, with the design of showing that "the belief of the planets and stars being inhabited is ill-founded; a notion taken up on insufficient grounds, and that the most recent astronomical discoveries point the other way;" the author declaring that these "views have long been in his mind, the convictions which they involve growing gradually deeper, through the effect of various trains of speculation;" it will be found, on referring to Dr Whewell's "Bridgewater Treatise," published in 1833, that these views seem not then to have been entertained by him. In book iii. chap. 2, we find him speaking thus: "The earth, the globular body thus covered with life, is not the only globe in the universe. There are circling about our own sun six* other [bodies], so far as we can judge, perfectly analogous in their nature, besides our moon, and other bodies analogous to it. No one can resist the temptation to conjecture that these globes, some of them much larger than our own, are not dead and barren; that they are, like ours, occupied with life, organisation, intelligence. To conjecture is all that we can do; yet even by the perception of such a possibility, our view of the domain of nature is enlarged and elevated." Speaking, again, of the stars, and supposing them suns, with planets revolving round them,

* Neptune now [1854] constituting a seventh.

he adds, "And these may, like our planet, be the seats of vegetable, animal, and rational life. We may thus have in the universe, worlds, no one knows how many, no one can guess how varied." And, finally, in the ensuing chapter, "On Man's Place in the Universe," he says: "We thus find, that a few of the shining spots which we see scattered on the face of the sky in such profusion, appear to be of the same nature as the earth; and may, perhaps, as analogy would suggest, be, like the earth, the habitations of organised beings." Undoubtedly these remarks are penned in a cautious and philosophic spirit; and upwards of twenty years' subsequent reflection, by the light of various splendid astronomical and geological discoveries during that interval, is now announced to have so far shaken Dr Whewell's faith in such "conjectures," as to induce him, "in all sincerity and simplicity," to submit "to the public the arguments, strong or weak," which had occurred to him on the subject; "and which, when he proceeded to write the Essay, assumed, by being fully unfolded, greater strength than he had expected." He is now disposed to regard a belief in the plurality of worlds, "to have been really produced by a guess, lightly made at first, quite unsupported by subsequent discoveries, and *discountenanced* by the most recent observations, though too remote from knowledge to be either proved or disproved." And further, he thus indicates the grand scope of the entire inquiry: "I do not attempt to disprove the plurality of worlds, by taking for granted the truths of Revealed Religion; but I say that the teaching of Religion may, to a candid inquirer, suggest the wisdom of not taking for granted the Plurality of Worlds. Religion seems, at first sight at least, to represent Man's history and position as unique. Astronomy, some think, suggests the contrary. I examine the force of this latter suggestion, and it seems to me to amount to little or nothing." In the tenth and eleventh chapters of the Essay, Dr Whewell,

if he be the author of it, thus speaks, in two passages (§§ 12, 20), which appear to us to indicate at once the spirit in which he offers his speculations, and his apprehension as to the reception with which they might meet. In the former, he owns that his "views are so different from those hitherto generally entertained, and considered as having a sort of religious dignity belonging to them, that we may fear, at first at least, they will appear to many rash and fanciful, and almost, as we have said, irreverent." In the latter he speaks thus:—

"It is not to be denied that there may be a regret and disturbance naturally felt at having to give up our belief that the planets and the stars probably contain servants and worshippers of God. It must always be a matter of pain and trouble, to be urged with tenderness, and to be performed in time, to untwine our reverential religious sentiments from erroneous views of the constitution of the universe with which they have been involved. But the change once made, it is found that religion is uninjured, and reverence undiminished. And therefore we trust that the reader will receive with candour and patience the argument which we have to offer with reference to this view, or, rather, this sentiment."

In this tone of manly modesty is expressed the whole of this really remarkable work; but all competent readers will also be struck by the dignified consciousness of power associated with that modesty. These two characteristics have invested this book with a certain charm in our eyes, which we cannot but thus avow, after having given his Essay, and the Dialogue, in which he deals with various objectors to his Essay, due consideration. A calm perusal of that masterly and truly admirable Dialogue, by the way, may suggest to shrewd opponents the necessity of approaching the writer of it with caution.

Here, then, we have a man of first-rate intellectual power, a practised and skilful dialectician, formidably familiar with almost every department

of physical science, in its latest and highest development; an eminent moral writer and academical teacher, and an orthodox clergyman in the Church of England, coming forward deliberately to commit himself to opinions which he acknowledges he does not publish "without some fear of giving offence;"—opinions at variance with those not only popularly held, but maintained by perhaps three-fourths of even scientific persons who have bestowed attention on the subject. Who can doubt his *right* to do so, especially in a calm and temperate spirit, as contradistinguished to one of arrogance and dogmatism? None but a fool would rush angrily forward, to encounter such an author with harsh and heated language, or derogatory and uncharitable insinuations and imputations. A philosophical and duly qualified opponent would act differently. He would say, In this age of free inquiry, no matter how bold and serious the attack on preconceptions and long-established opinion and belief, if it be made in a grave and manly spirit of inquiry and argument, and especially by one whose eminent character, qualifications, and position, entitle his suggestions and speculations to deliberate consideration—that deliberate consideration they must have. "I have presented," says the author, in his Dialogue, "gravely and calmly, the views and arguments which occurred to my mind, on a question which many persons think an interesting one; and if any one will introduce any other temper into the discussion of this question, with him I will hold no argument; if he write in a vehement and angry strain, I will have nothing to say to him." The essayist is here alluding to Sir David Brewster, the author of the second of the three works placed at the head of this article.—If, on the other hand, a man of great authority and reputation be unwise enough to run counter to opinions universally received, and that by persons of high scientific and literary reputation, merely as a sort of gladiatorial exercise, disturbing views right-ly associated with religion and science,

and with levity shaking the confidence of mankind in conclusions arrived at by the profoundest masters of science, he must take the consequences of being deemed presumptuous and trifling, and encounter the stern rebuke of those whom he is not entitled to treat with disrespect.

Now, a careful and unprejudiced perusal of this Essay has satisfied us concerning several things. It is written with uncommon ability. The author has an easy mastery of the English language, and these pages abound in vigorous and beautifully-exact expressions. From beginning to end, also, may be seen a subtle and guarded logic; a felicitous and masterly disposition of a vast and complicated subject; a thorough familiarity with the heights and depths of physics, divinity, and morals; and, above and infinitely beyond all, a reverent regard for the truths of revealed religion, and an earnest desire to advance its interests, by removing what, in the essayist's opinion, many deem a serious stumbling-block in the way of the devout Christian. That stumbling-block may be seen indicated in the audacious language which we have quoted from Thomas Paine. If this be the object which Dr Whewell has had in view,—and who will doubt it?—his title to respectful consideration is greatly enhanced. He must be given credit for having deliberately counted the cost of what he was about to do—the amount of censure, ridicule, and contempt which he might provoke. It seems that he has felt himself strong enough to make the experiment; and he almost immediately sees a distinguished contemporary, Sir David Brewster, quickly ascribing “his theories and speculations to no better feeling than a love of notoriety;” * who again stigmatises an argument of the essayist as “the most ingenious though shallow piece of sophistry which we have ever encountered in modern dialectics.” †

That Dr Whewell offers us, in his Essay and Dialogue, his real views and opinions, and that they have been

long and deeply considered, we implicitly believe, on his own statement that such is the case. It may nevertheless be, that he is the unconscious victim of an invincible love of paradox; and indeed Sir David Brewster unceremoniously characterises the essayist's conjectures concerning the fixed stars as “insulting to astronomy,” and “ascribable only to some morbid condition of the mental powers, which feeds upon paradox, and delights in doing violence to sentiments deeply cherished, and to opinions universally believed.” ‡ It may be, again, that the essayist having once conceived what he regards as a happy idea on a great question, dwells upon it with such an eager fondness as warps his judgment; that having committed himself to what he has seen to be a false position, he defends it desperately, with consummate logical adroitness. Or he may believe himself entitled to the credit of having demolished bold and vast theories, and plucked up by the roots an enormous fallacy. It may be so, or it may not; but Dr Whewell's is certainly a very bold attempt to swim against the splendid stream of modern astronomical speculation. He would say, however, Is it not as bold to *people* as to *depopulate* the starry structures? It is on you who do the former that the burthen of proof rests: you cannot see, or hear, inhabitants in otherspheres; the Bible tells us nothing about them; and where, therefore, is the EVIDENCE on which you found your assertion, and would coerce me into a concurrence in your conclusions? I long for the production of sufficient evidence of so awful a fact, as that God has created all the starry bodies for the purpose of placing, and that he *has* placed, upon them beings in any degree like man: moral, intellectual, accountable beings, of an equal, higher, or lower degree of intelligence, consisting of that wondrous combination of matter and mind, body and soul, which constitutes *man*, existing in similar relations to the external world. The mere suggestion startles me, both as a man

* *More Worlds than One*, 199. † *Ibid.*, 202.

‡ *Ibid.*, 230.

of science, and a Christian believer, on account of certain difficulties which appear to me greater than perhaps even you may have taken into account. But however this may be, I call upon you for proofs of so vast a fact as you allege to exist, or the best kind and greatest degree of evidence which may justify me in assenting to the existence of such a fact. We are dealing, moreover, he would observe, with facts, probabilities, improbabilities; and I repudiate any intrusion of sentiment or fancy. If God has told me that the fact exists, I receive it with reverence; and wonder at finding myself a member of so immense a family, from all communication with which he has been pleased to cut me off in my present stage of existence. But if God has not told me the fact directly, and if I feel no religious obligation to hold the fact to exist or not to exist, I will regard the question as one both curious and interesting, and weigh carefully the reasons which you offer in support of your assertion. But will you, in return, weigh carefully the reasons I offer for asserting a fact which appears to me, however erroneously as you may think, of incalculably greater personal moment to me as a member of the human family,—namely, that “man’s history and position are unique; that the earth is really the largest planetary body in the solar system, its domestic hearth, and the only WORLD in the universe”? I am quite as much startled at having to receive your notion, as you may be to entertain mine. My great engine of proof, says his opponent, is analogy: well, replies the other, there I will meet you; and the first grand point to settle is, whether there BE an analogy;* when that shall have been settled in the affirmative, we will, as carefully as possible, weigh the *amount* of it.

This is the point at issue between Dr Whewell and Sir David Brewster; who resolutely undertakes to demonstrate “More Worlds than One” to be the “creed of the philosopher, and the hope of the Christian.” It is to

* *Essay* (2d edition), p. 261.

be seen whether this eminent member of the scientific world, also a believer in the Christian religion, has undertaken a task to which he is equal. He must present such an amount of proof as will require the plurality of worlds to be accepted as his CREED, by a PHILOSOPHER; that is, by a Baconian—one accustomed to exact and patient investigation of facts, and inferences deducible from them; who rigorously rejects, as disturbing forces, all appeals to our hopes or wishes, our feelings or fancy.

There are two questions before us; to which we shall add, on our own account, a third. The first is that asked in the year 1686 by the gifted and sprightly Fontenelle,† whom Voltaire pronounced the most universal genius which the age of Louis XIV. produced, and echoed in 1854 by Sir David Brewster: “Pourquoi non? Why should there *not* be a plurality of worlds?” The second is that asked by Dr Whewell: “Why *should* there be?” The third is our own: *And what if there be?*—a question of a directly practical tendency. We shall commence with the second, because it will bring Dr Whewell first on the field; as it was he who has so suddenly mooted this singular question. But we would at the outset entreat our readers, at all events our younger ones, to remember that we are dealing with a purely speculative subject, respecting which zealous partisans are apt to draw on their imaginations; to assert or deny the existence of analogy, on insufficient grounds; to overstrain or underrate its force; and lend to bare probabilities, or even pure possibilities, somewhat of the air of facts, where *facts* there are absolutely none. ‘The argument,’ says a gifted friend of the author’s, ‘dies, for want of facts to feed it.’

I. *Why should there be more worlds than one?* “I do not pretend,” says Dr Whewell, “to *disprove* the plurality of worlds, but I ask in vain for

† Horace Walpole professed the reading of Fontenelle’s book to have made him disbelieve in all revelation!—See the close of this paper.

any argument that makes the doctrine *probable*." Astronomy no more reveals to us extra-terrestrial moral agents, than religion reveals to us extra-terrestrial plans of Divine government; and to remedy the assumption of moral agents in other worlds, by the assumption of some operation of the Divine plan in other worlds, is unauthorised and fanciful, and a violation of the humility, submission of mind, and spirit of reverence, which religion requires.* He considers Dr Chalmers' admission that astronomy offers strong analogies in favour of such opinions, "more than rash:" he regards such "analogies" as, "to say the least, greatly exaggerated; and by taking into account what astronomy really teaches us, and what we learn also from other sciences," he will "attempt to reduce such analogies to their true value." We have seen him in the year 1833, expressing an opinion, very doubtfully,—with a "*perhaps*,"—that, "as analogy would suggest, a few of the heavenly bodies, appearing to be of the same nature as the earth *may* be, like it, the seats of organised beings." He is now disposed to annihilate those analogies, so far as they are deemed sufficient to warrant such an immense conclusion. But that to which he is now disposed to come is equally immense, and, in the present state of popular opinion on the subject, startling. He says, "That the earth is inhabited, is not a reason for believing that the other planets are so, but for believing that they are *not* so."† Her orbit "is the temperate zone of the solar system, where only is the play of hot and cold, moist and dry, possible." "The earth is really the largest planetary body in the solar system; its domestic hearth; adjusted between the hot and fiery haze on one side, the cold and watery vapour on the other. This region only is fit to be a domestic hearth, a seat of habitation; in this region is placed the largest *solid* globe of our system; and on this globe, by a series of *creative* operations, entirely different from any of those which se-

parated the solid from the vaporous, the cold from the hot, the moist from the dry, have been established, in succession, plants, and animals, and *MAN*. So that the habitation has been occupied; the domestic hearth has been surrounded by its family; the fitnesses so wonderfully combined have been employed, and the earth alone, of all the parts of the frame which revolve round the sun, has become a *WORLD*."‡

Let us here point the reader's attention to two or three passages of Scripture, one of which he may possibly regard as remarkable, with reference to the subject under consideration. "The heavens, even the heavens, are the Lord's; *but the earth hath He given to the children of men.*"§ "Thus saith God the Lord, He that created the heavens, and stretched them out; He that spread forth the earth and that which cometh out of it; He that giveth breath unto the people *upon it*, and spirit to them that walk *therein*."|| "I have made the earth, and created man *upon it*; I, even my hands, have stretched out the heavens, and all their host have I commanded. Thus saith the Lord, that created the heavens; God himself, that formed the earth, and made it; He hath established it, He created it not in vain, He formed *it* to be *inhabited*: I am the Lord; and there is none else."¶ Here the Psalmist speaks of both the heavens and the earth, saying of the latter, only, that He has *given it* to the children of men; while the inspired Prophet repeatedly speaks of the heavens and the earth, saying that God had given breath to the people *upon it*, and spirit to them that walk *therein*; that He had created man *upon it*; that He had created "the *EARTH*" not *in vain*, but formed "*it*" to be inhabited. It is not said that He formed the heavens to be inhabited, but the earth. Now, this latter passage Sir David Brewster has quoted as "a distinct declaration from the inspired prophet, that the earth would have been created *in*

* *Essay*, 153, 154.

† *Ibid.*, 299, 300.

‡ *Essay*, 308, 309.

|| *Isaiah*, xlii. 5.

§ *Psalms* cxv. 16

¶ *Ibid.*, xlv. 12, 13.

VAIN, if it had not been formed to be inhabited; and hence, he continues, we * draw the conclusion, that as the Creator cannot be supposed to have made the worlds of our system, and those in the sidereal universe, in vain, *they must have been formed to be inhabited.*† Is not this a huge "conclusion" to draw from these premises? And do not the words tend really the other way, to show that *the earth*, with its wondrous adaptations, would have been created in vain, if not to be inhabited; but that the heavens may be created for other purposes, of which man, in the present stage of existence, has not, nor can, and perhaps is *designed* not to have, any conception?

We have spoken of Sir David Brewster's drawing a huge conclusion from a passage of Scripture in support of his views of the question before us; but we have to present a still huger conclusion drawn by him from another glorious passage: "When I consider the heavens, the work of Thy fingers, the moon and the stars, which Thou hast ordained, what is man, that Thou art mindful of him, and the son of man, that Thou visitest him?" "This," says the confident and exulting Sir David, "is a positive argument for a plurality of worlds! We cannot doubt that inspiration revealed to the Hebrew poet the magnitude, the distances, and the final cause of the glorious spheres which fixed his admiration." "He doubtless viewed these worlds as *teeming with life, physical and intellectual*; as globes which may have required millions of years for their preparation, exhibiting new forms of beings, new powers of mind, new conditions in the past, and new glories in the future!" In his Dialogue, Dr Whewell thus drily dismisses this extraordinary flight of

* Sir David Brewster's book is only an expansion of an article which he contributed to a Northern Quarterly Review; and he has forgotten to adapt its form to that of a professedly independent work, bearing its author's name on the title-page. To this circumstance his watchful opponent, the essayist, makes sternly sarcastic reference, in his *Dialogue*, pp. 83, 84. (Third Edition.)

† *More Worlds than One*, p. 17.

his opponent: "That the Hebrew poet knew, or thought about, the plurality of worlds, is a fact hitherto unnoticed by the historians of astronomy; to their consideration I leave it."

Let us now, however, follow Dr Whewell in the development of his idea; bearing in mind his own impressive statement, in his preface, that, "while some of his philosophical conclusions appear to him to fall in, very remarkably, with certain points of religious doctrine, he is well aware that philosophy alone can do little in providing man with the consolations, hopes, supports, and convictions which religion offers; and he acknowledges it as a ground of deep gratitude to the Author of all Good, that man is not left to philosophy for those blessings, but has a fuller assurance of them by a more direct communication from Him."

"The two doctrines which we have here to weigh against each other," says Dr Whewell, "are the *plurality* of worlds, and the *unity* of the world;" and he "includes, as a necessary part of the conception of a 'WORLD,' a collection of intelligent creatures, where reside intelligence, perception of truth, recognition of moral law, and reverence for a Divine Creator and Governor."† His Essay branches into three great divisions, in disposing of the conjectural plurality of worlds, and suggesting the reality of the unity of the world. First, he considers the constitution of man; secondly, that of the earth which he inhabits, its adaptation, structure, and position; lastly, its neighbours in the heavens—the solar system to which it belongs, the fixed stars, and the nebulae; and as to these, he declares that "a closer inquiry, *with increased means of observation*, gives no confirmation to the conjecture which certain aspects of the universe at first sight suggested to man, that there may be other bodies, like the earth, tenanted by other creatures like man; some characters of whose nature seem

† *Essay*, p. 359.

to remove or lessen the difficulties we may at first feel in regarding the earth as, in a *unique and special manner*, the field of God's providence and government.* This is not the order in which Dr Whewell proceeds, but it is that which, after carefully considering the entire scope of his work, we shall observe, in giving our readers such a brief and intelligible an account as we can, of this splendid and startling Essay.

He commences with a beautiful sketch of the state of "Astronomical Discoveries," with which Dr Chalmers dealt in his celebrated Discourses; by no means understating the amount of them, with reference principally to the number of the heavenly bodies—"a countless host of worlds, arranged in planetary systems, having years and seasons, days and nights, as we have;" as to which, "it is at least a likely suggestion that they have also inhabitants; intelligent beings, who can reckon those days and years; who subsist on the fruits which the seasons bring forth, and have their daily and yearly occupations, according to their faculties."† If this world be merely one of innumerable other worlds, all, like it, the workmanship of God; all the seats of life, like it, occupied by intelligent creatures, capable of will, law, obedience, disobedience, as man is,—to hold that it alone should have been the scene of God's care and kindness, and still more, of his special interposition, communication, and personal dealings with its individual inhabitants, in the way which religion teaches, is, the objector is conceived to maintain, in the highest degree extravagant, incredible, and absurd.‡ Such is, as we have seen, the assertion of Thomas Paine; and Dr Whewell proposes to discuss this vast speculative question, "not as an objection urged by an opponent, but rather as a difficulty felt by a friend of religion;"—"to examine rather how we can quiet the troubled and perplexed believer, than how we can triumph over the dog-

matical and self-satisfied infidel."§ But let our reader note well, at starting, the above mighty "IF:" which he may regard as the comet's nucleus, drawing after it an enormous and dismaying train of consequences, sweeping into annihilation man's hopes, equally with his fears.

Dr Whewell gives a lucid and terse account of the scope of Dr Chalmers's eloquent declamation, his ingenious suggestions, and his astronomical or philosophical arguments, which he deems "of great weight; and, upon the whole, such as we may both assent to, as scientifically true, and accept as rationally persuasive. I think, however," continues Dr Whewell, "that there are other arguments, also drawn from scientific discoveries, which bear in a very important and striking manner upon the opinions in question, and which Chalmers has not referred to; and I conceive that there are philosophical views of another kind, which, for those who desire, and will venture to regard the universe and its Creator in the wider and deeper relations which appear to be open to human speculation, may be a source of satisfaction."||

WHAT IS MAN? is the pregnant question of the royal Psalmist; and Dr Whewell gives an account of man at once ennobling and solemnising: in strict accordance, moreover, with revelation, and with those views of his moral and intellectual nature universally entertained by the believers in revealed religion. We know of none living entitled to speak with more authority on such subjects than Dr Whewell, as evidenced by his writings; and we think it impossible for any thoughtful person to read the portions of his Essay relating to this subject, without feelings of awe and reverence towards Him whose image we bear. Not that any new conditions of human nature are suggested, or any peculiarly original views of it presented; but our knowledge on the subject is, as it were, condensed into a focus, and then brought to bear upon

* Essay, p. 359.

† Ibid., pp. 94, 95.

‡ Ibid., pp. 98, 99.

§ Essay, p. 103.

|| Ibid., p. 104.

the question, What is man, that his Maker should be mindful of him, and visit him? and thereby render the earth, in a unique and special manner, the field of God's providence and government?

Lord Bolingbroke objected to the Mosaic account of the creation, and "that man is made by Moses as the final end, if not of the whole creation, yet at least of our system;" but let us remember, that Moses also tells us that God determined "to make *man in Our image, after Our likeness*;" that God did, accordingly, create man in his own image; Moses, with special significance, twice asserting the fact that *in the image of God created He him*; and he tells us that, after the flood, God assigned this as a reason for visiting the crime of murder with death—Whoso sheddeth man's blood, by man shall his blood be shed; *for* in the image of God made he man. The full import of that awful and mysterious expression, "the image and likeness, of God," though man, in his fallen state, may not know, may yet have been known by Adam: and his descendants believe, that it consists in their Intellectual and Moral nature. The former is, in some measure, of the same nature as the Divine mind of the Creator; * the laws which man discovers in the creation must be laws known to God; those which man sees to be true, those of geometry, for instance, God also must see to be true. That there were, from the beginning, in the Creator's mind creative thoughts, is a doctrine involved in every intelligent view of creation: a doctrine which has recently received splendid illustration by a living "great discoverer in the field of natural knowledge."† Law implies a lawgiver, even when we do not see the object of the law; as design implies a designer, when we do not see the object of the design. The laws of nature are the indications of the operation of the Divine mind, and are revealed to us, as such, by those operations of our own mind, by which we come to discover them. They are the utterances

of the Creator, delivered in language which we can understand; and being thus *Language*, they are the utterances of an Intelligent Spirit.‡

"If man, when he attains to a knowledge of such laws, is really admitted, in some degree, to the view with which the Creator himself beholds his creation; if we can gather, from the conditions of such knowledge, that his intellect partakes of the nature of the Divine intellect; if his mind, in its clearest and largest contemplation, harmonises with the Divine mind,—we have in this a reason which may well seem to us very powerful, why, even if the earth alone be the habitation of intelligent beings, still the great work of creation is not wasted. If God have placed on the earth a creature who can so far sympathise with him (if we may venture upon the expression), who can raise his intellect into some accordance with the creative intellect; and that not once only, nor by few steps, but through an indefinite gradation of discoveries more and more comprehensive, more and more profound, each an advance, however slight, towards a Divine Insight; then, so far as intellect alone, of which alone we are here speaking, can make man a worthy object of all the vast magnificence of creative power, we can hardly shrink from believing that he is so."§

Again. The earth is a scene of MORAL TRIAL. Man is subject to a moral law; and this moral law is a law of which God is the legislator—a law which man has the power of discovering, by the use of the faculties which God has given him. Now, the existence of a body of creatures, capable of such a law, of such a trial, and of such an elevation, as man is the subject, and has the power of—that is, of rising from one stage of virtue to another, by a gradual and successive purification and elevation, of the desires, affections, and habits, in a degree, so far as we know, without limit—is, according to all we can conceive, infinitely more worthy of the Divine Power and Wisdom, in the

* *Essay*, 360. † *Ibid.*, (Professor Owen.)

‡ *Essay*, 362.

§ *Ibid.*, 364, 365.

creation of the universe, than any number of planets occupied by creatures having no such lot, no such law, no such capacities, and no such responsibilities. However imperfectly the moral law may be obeyed; however ill the greater part of mankind may respond to the appointment which places them here in a state of moral probation; however few there may be who use the capacities and means of their moral purification and elevation; still *that there is* such a plan in the creation, and that *any* respond to its appointments, is really a view of the universe which we can conceive to be suitable to the nature of God, because we can approve it, in virtue of the moral nature which He has given us. One school of moral discipline, one theatre of moral action, one arena of moral contests for the highest prizes, is a sufficient centre for innumerable hosts of stars and planets, globes of fire and earth, water and air, whether or not tenanted by corals and madrepores, fishes and creeping things. So great and majestic are those names of RIGHT and GOOD, DUTY and VIRTUE, that all mere material or animal existence is worthless in the comparison." "Man's moral progress is a progress towards a likeness with God; and such a progress, even more than a progress towards an intellectual likeness with God, may be conceived as rendering the soul of man fit to endure for ever with God, and therefore, as making this earth a preparatory stage of human souls to fit them for eternity—a nursery of plants which are to be fully unfolded in a celestial garden. And if this moral life be really only the commencement of an infinite Divine plan beginning upon earth, and destined to endure for endless ages after our earthly life, we need no array of other worlds in the universe, to give sufficient dignity and majesty to the scheme of the Creator.

The author of the Essay then ascends to an infinitely greater and more awful altitude:—

"If by any act of the Divine government the number of those men

should be much increased, who raise themselves towards the moral standard which God has appointed, and thus towards a likeness to God, and a prospect of a future eternal union with him; such an act of Divine government would do far more towards making the universe a scene in which God's goodness and greatness were largely displayed, than could be done by any amount of peopling of planets with creatures who were incapable of moral agency, or with creatures whose capacity for the development of their moral faculties was small, and would continue to be small, till such an act of Divine government was performed. The interposition of God, in the history of man, to remedy man's feebleness in moral and spiritual tasks, and to enable those who profit by the interposition to ascend towards a union with God, is an event entirely out of the range of those natural courses of events which belong to our subject: and to such an interposition, therefore, we must refer with great reserve; *using great caution that we do not mix up speculations and conjectures of our own with what has been revealed to man concerning such an interposition.** But this, it would seem, we may say, that such a Divine interposition, for the moral and spiritual elevation of the human race, and for the encouragement and aid of those who seek the purification and elevation of their nature, and an eternal union with God, is far more suitable to the idea of a God of infinite goodness, purity, and greatness, than any supposed multiplication of a population, on our own planet, or on any other, not provided with *such* means of moral and spiritual progress. And if we were, instead of such a supposition, to imagine to ourselves, in other regions of the universe, a moral population purified and elevated without the aid, or need, of any such Divine interposition, the supposed possibility of such a moral

* We have placed these words in italics, in order to draw to them the reader's particular attention; for the "caution" here spoken of is never lost sight of by the author of the Essay.

race would make the sin and misery, which deform and sadden the aspect of our earth, appear more dark and dismal still. We should, therefore, it would seem, find no theological congruity, and no religious consolation, in the assumption of a plurality of worlds of moral beings; while, to place the seats of those worlds in the stars and the planets would be, as we have already shown, a step discountenanced by physical reasons; and discountenanced the more, the more the light of science is thrown upon it.*

Should it be urged, that if the creating one world of such creatures as man exalts so highly our views of the dignity and importance of the plan of creation, the belief in many such worlds must elevate still more our sentiments of admiration and reverence of the greatness and goodness of the Creator; and must be a belief, on that account, to be accepted and cherished by pious minds, Dr Whewell replies in the following weighty passage:—

"We cannot think ourselves authorised to assert cosmological doctrines, *selected arbitrarily by ourselves*, on the ground of their exalting our sentiments of admiration and reverence for the Deity, *when the weight of all the evidence which we can obtain respecting the constitution of the universe is against them*. It appears to me, that to discover one great scheme of moral and religious government, which is the spiritual centre of the universe, may well suffice for the religious sentiments of men in the present age; as in former ages, such a view of creation was sufficient to overwhelm men with feelings of awe, and gratitude, and love, and to make them confess, in the most emphatic language, that all such feelings were an inadequate response to the view of the scheme of Divine Providence which was revealed to them. The thousands of millions of inhabitants of the earth, to whom the effects of the Divine love extend, will not seem to the greater part of religious persons, to need the

* *Essay*, pp. 370, 371.

addition of more, in order to fill our minds with vast and affecting contemplations, so far as we are capable of pursuing such contemplations. The possible extension of God's spiritual kingdom upon the earth will probably appear to them a far more interesting field of devout meditation than the possible addition to it of the inhabitants of distant stars, connected, in some inscrutable manner, with the Divine plan."†

"In this state of our knowledge," Dr Whewell subsequently adds, after recapitulating the whole course of the argument indicated by the lines above placed in italics, "and with such grounds of belief, to dwell upon the plurality of worlds of intellectual and moral creatures as a highly probable doctrine, must, we think, be held to be eminently rash and unphilosophical. On such a subject, where the evidences are so imperfect, and our power of estimating analogies so small, far be it from us to speak positively and dogmatically. And if any one holds the opinion, on *whatever* evidence, that there are other spheres of the Divine government than this earth, other spheres in which God has subjects and servants, other beings who do his will, and who, it may be, are connected with the moral and religious interests of man, we do not breathe a syllable against such a belief, but, on the contrary, regard it with a ready and respectful sympathy: it is a belief which finds an echo in pious and benevolent hearts, and is of itself an evidence of that religious and spiritual character in man, which is one of the points of our argument. * * * But it would be very rash and unadvised—a proceeding unwarranted, we think, by religion, and certainly at variance with all that science teaches—to place those other extrahuman spheres of Divine government in the planets and in the stars. With regard to these bodies, if we reason at all, we must reason on *physical* grounds; we must suppose, as to a great extent we can prove, that the

† *Ibid.*, pp. 371, 372.

laws and properties of terrestrial matter and motion apply to them also. On such grounds it is as improbable that visitants from Jupiter, or from Sirius, can come to the earth, as that men can pass to those stars—as unlikely that inhabitants of those stars know and take an interest in human affairs, as that we can learn what they are doing. A belief in the Divine government of other races of spiritual creatures, besides the human race, and in Divine ministrations committed to such beings, cannot be connected with our physical and astronomical views of the nature of the stars and planets, without making a mixture altogether incongruous and incoherent—a mixture of what is material and what is spiritual, adverse alike to sound religion and to sound philosophy.*

Those possessing a competent acquaintance with the doctrines of theology, and ethical and metaphysical discussions, cannot, we think, read this necessarily faint and imperfect outline of what Dr Whewell has thus far advanced on the subject, without appreciating the circumspection and discretion with which he handles the critical subject which he here discusses. It is deeply suggestive to reflecting minds; who may be disposed to note with satisfaction how closely his doctrine, as thus far developed, quadrates with those of the Christian system. He has well reminded us, in the Dialogue, of a saying of Kant—that, “two things impressed him with awe: the starry heavens without him, and the *Moral Principle within*,” and the current of his reflections impels the reflections of a devout reader towards that awful passage in the New Testament,—words which fell from the lips of the Saviour of mankind: “For what is a man profited, if he shall gain *the whole world*, and lose his own soul? Or what shall a man give in exchange for his soul? For the Son of man shall come in the glory of His Father, with His angels, and then He shall reward every man according to his works.”† These two

* *Essay*, 375, 376. † *Matt.* xvi. 26, 27.

questions (to say nothing of the significance of the expression with reference to the subject now under discussion, “the whole world,”) and the reason which is proposed to those who would answer the question, as that which should govern the choice between their own soul and the whole world, justify our attaching the highest conceivable value and importance to man, as a rational, a moral, an accountable being.

In the Dialogue, an objector suggests, “But in your inclination to make man the centre of creation, and the object of all the rest of the universe, are you not forgetting the admonitions of those who warn us against this tendency to self-glorification? You will recollect how much of this warning there is in the “*Essay on Man*.”—

‘Ask for what end the heavenly bodies shine?
Earth, for whose use? Pride answers, ‘Tis
for mine.’

To imagine ourselves of so much consequence in the eyes of the Creator is natural to us, self-occupied as we are, till philosophy rebukes such conceit.” To which it is justly answered—“It is quite right to attend to such warnings. But warnings may also be useful on the other side: warnings against self-disparagement; against the belief that man is *not* an important object in the eyes of the Creator. I do not know what philosophy represents man as insignificant in the eyes of the Deity;—and still less does religious philosophy favour the belief of man’s insignificance in the eyes of God. What great things, according to the views which religion teaches, has He done for mankind, and for each man!”‡

But man’s intellectual and moral nature being of such dignity and value in the estimation of God, other circumstances connected with him tend in the same direction, says Dr Whewell, and point him out as a special and unique existence, in every way worthy of his transcendent position. He is created by a direct and special act of the Deity, and placed and continued, under circumstances

‡ *Dialogue*, pp. 53, 54.

of a most remarkable character, upon the locality prepared for him through a long course of ages. We need hardly say that Dr Whewell repudiates the irreligious, idle, and unphilosophical notion that man is merely the result of material development out of a series of animal existences. This figment Dr Whewell easily demolishes, on philosophical grounds, in common with all the great scientific men of the age; and having vindicated for man the dignity of his origin, and differing not only in his kind, but in his order, from all other orders of creation, proceeds to consider his recently developed relations to his earthly abode. This brings us to the second stage of the argument, to be found in two chapters of the Essay, the fifth and sixth, respectively entitled, "Geology;" and "the Argument from Geology;" both written with uncommon ability, and exhibiting proofs of the great importance attached to them by the author. Even those who may altogether dissent from his main conclusions, will appreciate the interesting and instructive, the masterly and suggestive outline which he gives of this noble twin sister of Astronomy, Geology. We are disposed to hazard a conjecture, that the governing idea developed in these chapters, was the origin of the whole speculation to which the Essay is devoted.*

Before entering, however, on this second stage of the inquiry, and that detailed examination which may enable us to grasp the scope of this curious and interesting discussion, let us briefly recapitulate, and fix our mind on the precise nature of the question, which, since the foregoing pages were written, we have seen more than once the subject of misconception.

The heavenly bodies around us, some or all of them, are, or are not, in point of fact, the abodes of intellectual and moral beings *like ourselves*—that is, be it observed, consisting of

* Since this was written, we have had some reason to believe that this conjecture is well founded.

body and soul. That there are other and higher orders of intelligent existence, both the Christian and the mere philosopher may, and the former must, admit as an article of his "creed;" but what may be the mode of that existence, and its relations to that physical world of which we are sensible, we know not, and conjecture would be idle. That beings like ourselves exist elsewhere than here, is not revealed in Scripture; and the question, consequently, for us to concern ourselves with is, whether there nevertheless exist rational grounds for believing the fact to be so. The accomplished and eminent person who has so suddenly started this discussion, has, since his Essay appeared,† and in strict consistency with it, emphatically declared—"As I conceive the unity of the world to be the result of its being the work of one Divine Mind, exercising creative power according to His own Ideas; so it seems to me not unreasonable to suppose that man, the being which can apprehend, in some degree, those Ideas, is a creature unique in the creation." But what says Sir David Brewster, speaking of the greatest known member of our planetary system, Jupiter?

"With so many striking points of resemblance between the Earth and Jupiter, the unprejudiced mind cannot resist the conclusion, that Jupiter has been created, like the Earth, for the express purpose of being the seat of animal and intellectual life. The Atheist and the Infidel, the Christian and the Mohammedan, men of all creeds, nations, and tongues, the philosopher and the unlettered peasant, have all rejoiced in this universal truth; and we do not believe that any individual who confides in the facts of astronomy seriously rejects it. If such a person exists, we would gravely ask him, for what purpose could so gigantic a world have been framed?"‡

I am such a person, would say Dr Whewell; and I frankly own that I cannot tell why Jupiter was created. "I do not pretend to know for what

† Dialogue, 37. ‡ *More Worlds than One*, 59.

purpose the stars were made, any more than the flowers;* or the crystalline gems, or other innumerable beautiful objects." "No doubt the Creator might make creatures fitted to live in the stars, or in the small planetoids, or in the clouds, or on meteoric stones; but we cannot believe that he *has* done this, without further evidence."† And as to the "facts of astronomy," let me patiently examine them, and the inferences you seek to deduce from them. Besides which, I will bring forward certain facts in that science, and in another, of which you seem to have taken no account.

As we foresaw, Dr Whewell's *Essay* is attracting increased attention; and, as far as we can ascertain the scope of contemporaneous criticism hitherto pronounced, it is hostile to his views, while uniformly recognising the power and scientific knowledge with which they are enforced. "We scarcely expected," observes one of his reviewers, "that in the middle of the nineteenth century, a serious attempt would have been made to restore the exploded ideas of man's supremacy over all other creatures in the universe; and still less that such an attempt would have been made by any one whose mind was stored with scientific truths. Nevertheless a champion has actually appeared, who boldly dares to combat against all the rational inhabitants of other spheres; and though as yet he wears his vizor down, his dominant bearing, and the peculiar dexterity and power with which he wields his arms, indicate that this knight-errant of nursery notions can be no other than the Master of Trinity College, Cambridge."‡ The reviewer falls, it appears to us, into a serious error as to the sentiments of Dr Whewell, when charging him with requiring us "to assume that, in the

creation of intelligent beings, Omnipotence must be limited, in its operations, to the ideas which human faculties can conceive of them: that such beings must be men like ourselves, with similar powers, and have had their faculties developed by like means." In the very passage cited to support this charge, Dr Whewell will be found thus exactly limiting his proposition so as to exclude so impious and absurd a supposition: "In order to conceive, on the Moon, or on Jupiter, a race of beings intelligent *like man*, we must conceive there colonies of men, with histories resembling, more or less, the histories of human colonies: and, indeed, resembling the history of those nations whose knowledge we inherit, far more closely than the history of any other terrestrial nation resembles that part of terrestrial history."§ In the passage which we have so recently quoted, Dr Whewell expressly declares, as of course he could not help declaring, that the Creator no doubt might make creatures fitted to live on the stars, or anywhere; but the passage misunderstood by the reviewer, appears to us possessed of an extensive significance not perceived by the reviewer; and is closely connected with that portion of the author's speculations with which we have already briefly dealt, especially that which regards Man as a being of progressive development.

"The privileges of man," observes Dr Whewell, in a passage essential to be considered by those who would follow his argument, "which make the difficulty in assigning him his place in the Vast Scheme of the universe, we have described as consisting in his being an Intellectual, Moral, and Religious creature. Perhaps the privileges implied in the last term, and their place in our argument, may justify a word more of explanation.

"Religion teaches us that there is open to man, not only a prospect of a life in the presence of God, after this mortal life, but also the possibility, and the duty, of spending *this* life as in the presence of God. This is, pro-

* See the Note at the end of this paper.

† *Dialogue*, pp. 5, 6.

‡ Dr Whewell is now almost avowedly the author of this *Essay*; for he not only sanctions by silence the universally received statement that he is such, but since the preceding portions of this paper were written, has allowed his publisher to advertise the work to which we have already referred (*Indications of the Creator*), as by him.

§ *Essay*, p. 120.

perly, the highest result and manifestation of the effect of religion upon Man. Precisely because it is this, it is difficult to speak of this effect without having to use the language of enthusiasm; and yet again, precisely because it is so, our argument would be incomplete without a reference to it. There is, for man, a possibility and a duty of bringing his thoughts, purposes, and affections, more and more into continual unison with the will of God. This even Natural religion taught man was the highest point at which he could aim; and Revealed religion has still more clearly enjoined the duty of aiming at such a condition. The means of a progress towards such a state belong to the religion of the heart, and the mind. They include a constant purification and elevation of the thoughts, affections, and will: wrought by habits of religious reflection and meditation—of prayer and gratitude to God. Without entering into further explanation, all religious persons will agree that such a progress is, under happy influences, possible for man; and is the highest condition to which he can attain in this life. Whatever names may have been applied, at different times, to the steps of such a progress—the cultivation of the Divine Nature in us, resignation, devotion, holiness, union with God, living in God, and with God in us—religious persons will not doubt that there is a reality of internal state corresponding to these expressions; and that to be capable of elevation into the condition which these expressions indicate, is one of the especial privileges of man. Man's soul, considered especially as the gift of God's goodness, is often called his *spirit*; and that man is capable of such conformity to the will of God, and approximation to Him, is sometimes expressed by speaking of him as a Spiritual Creature. And though the privilege of being, or of being capable of becoming, in this sense, a spiritual creature, is a part of man's religious privileges, we may sometimes be allowed to use this additional expression, 'spiritual,' in order to remind the

reader how great these religious privileges are, and how close is the relation between man and God which they imply. We have given a view of the peculiar character of man's condition, which seems to claim for him a nature and place unique, and incapable of repetition in the scheme of the universe; and to this view, Astronomy, exhibiting to us the habitation of man as only one of many similar abodes, offers no objection. We are therefore now called upon to proceed to exhibit the Answer which a somewhat different view of modern science suggests to this difficulty or objection."

"The difficulty," he proceeds to observe, with equal force and distinctness, "appears great either way of considering it. Can the earth alone be the theatre of such intelligent, moral, religious, and spiritual action? Or can we conceive *such* action to go on in the other bodies of the universe? In the latter alternative, other planets and systems must be peopled with men such as we are, even to their history; for the intellectual and moral condition of man implies a *history* of the species; and the view of man's condition which religion presents, not only involves a scheme of which the history of the human race is a part, but also asserts a peculiar reference had, in the provisions of God, to the nature of man; and even a peculiar relation and connection between the human and the Divine nature. To extend such suppositions to other worlds, would be a proceeding so arbitrary and fanciful, that we are led to consider whether the alternative supposition may not be more admissible—that man is, in an especial and eminent manner, the object of God's care; that his place in the creation is, not that he occupies merely one among multitudes of similar domiciles, provided in boundless profusion by the Creator of the universe, but that he is the servant, subject, and child of God, in a way unique and peculiar; that his being a spiritual creature (including his other attributes in the highest, for the sake of brevity) make him belong to a spiritual world, which is not to

be judged of merely by analogies belonging to the material universe. Between these two difficulties the choice is embarrassing, and the decision must be unsatisfactory, except we can find some further ground of judgment. But this, perhaps, is not hopeless. We have hitherto referred to the evidence and analogies supplied by one science, namely, Astronomy. But there are other sciences which give us information concerning the nature and history of the Earth. From some of these we may perhaps obtain some knowledge of the place of the Earth in the scheme of creation; how far it is, in its present condition, a thing unique, or only one thing among many like it. Any science which supplies us with evidence or information on this head, will give us aid in forming a judgment upon the question under our consideration."

Thus the accomplished and venturesome essayist steps upon the splendid domain of GEOLOGY. To this great but recently consolidated science Dr Chalmers made no allusion in his celebrated "Discourses on the Christian Revelation, viewed in connection with the Modern Astronomy,"* which were delivered in the year 1817, nearly thirty-seven years ago: and then he spoke, in his first Discourse, of Astronomy as "the most certain and best established of the sciences." Dr Whewell, however, vindicates the claims of Geology, in respect of both the certainty and vastness of her discoveries, in a passage so just and admirable, that we must lay it before our readers.

"As to the vastness of astronomical discoveries, we must observe that

* One or two of these *Discourses*, all of which were delivered in the Tron Church, Glasgow, at noon on the week day, were heard by the writer of this paper, then a boy. He had to wait nearly four hours before he could gain admission as one of a crowd, in which he was nearly crushed to death. It was with no little effort that the great preacher could find his way to his pulpit. As soon as his fervid eloquence began to stream from it, the intense enthusiasm of the auditory became almost irrepressible; and in that enthusiasm the writer, young as he was, fully participated. He has never since witnessed anything equal to the scene.

those of Geology are no less vast. They extend through time, as those of Astronomy do through space; they carry us through millions of years—that is, of the earth's revolutions—as those of Astronomy through millions of diameters of the earth's orbit. Geology fills the regions of duration with events, as Astronomy the regions of the universe with objects. The former carries us backwards by the relation of cause and effect, as the latter carries us upwards by the relations of geometry. As Astronomy steps on from point to point of the universe by a chain of triangles, so Geology steps from epoch to epoch of the earth's history by a chain of mechanical and organical laws. If the one depends on the axioms of geometry, the other depends on the axioms of causation. So far, then, Geology has no need to regard Astronomy as her superior; and least of all, when they apply themselves, together, to speculations like these. But in truth, in such speculations, Geology has an immeasurable superiority. She has the command of an implement, in addition to all that Astronomy can use; and one, for the purpose of such speculations, adapted far beyond any astronomical element of discovery. She has, for one of her studies—one of her means of dealing with her problems—the knowledge of life, animal and vegetable. Vital organisation is a subject of attention which has, in modern times, been forced upon her. It is now one of the main parts of her discipline. The geologist must study the traces of life in every form—must learn to decipher its faintest indications and its fullest development. On the question, then, whether there be, in this or that quarter, evidence of life, he can speak with the confidence derived from familiar knowledge; while the astronomer, to whom such studies are utterly foreign, because he has no facts which bear upon them, can offer, on such questions, only the loosest and most arbitrary conjectures, which as we have had to remark, have been rebuked by eminent

men as being altogether inconsistent with the acknowledged maxims of his science."*

Before we proceed to state the profoundly suggestive argument derived from this splendid science,† we may apprise the reader that Dr Whewell's primary object is to show that even "*supposing* the other bodies of the universe to resemble the earth, so far as to seem, by their materials, forms, and motions, no less fitted than she to be the abodes of life, yet that, knowing what we know of Man, we can believe the earth to be tenanted by a race who are the *special* objects of God's care."‡ The grounds for entertaining, or rather impugning, that supposition he subsequently deals with after his own fashion in Chapters VII., VIII., IX., X.; but the two with which we are at present concerned are the fifth and sixth.

The exact object at which this leading section of the Essay is aimed is, in the essayist's words, this:—"A complete reply to the difficulty which astronomical discoveries appear to place in the way of religion;—the difficulty of the opinion that Man, occupying this speck of earth but as an atom in the universe, surrounded by millions of other globes larger, and to all appearance nobler, than that which he inhabits, should be the object of the peculiar care and guardianship of the favour and government of the Creator of All, in the way in which religion teaches us that he is."§

What is that "complete reply?" The following passage contains a key to the entire speculation of the essayist, and deserves a thoughtful perusal:—

"The scale of man's insignificance is of the same order in reference to Time, as to Space. Man—the Human Race from its origin till now—has oc-

* *Essay*, pp. 193, 194.

† In the *Dialogue*, Dr Whewell states that it was not till after the publication of his *Essay* that he became acquainted with the fact of the coincidence of his views, on the subject of Geology, with those of Mr Hugh Miller, in his *First Impressions of England*, with reference to astronomical objections to Revelation.

‡ *Essay*, chap. vii., sec. 1, p. 206.

§ *Ibid.*, chap. vi. sec. 27, p. 190.

cupied but an atom of time as he has occupied but an atom of space. * * * If the earth, as the habitation of Man, be a speck in the midst of an infinity of space, the Earth, as the habitation of Man, is also a speck at the end of an infinity of time. If we be as nothing in the surrounding universe, we are as nothing in the elapsed eternity—or rather in the elapsed organic antiquity during which the Earth has existed, and been the abode of life. If Man be but one small family in the midst of innumerable possible households, he is also but one small family, the successor of innumerable tribes of animals, not possible only, but actual. If the planets may be the seats of life, we know that the seas, which have given birth to our mountains, were so. If the stars *may* have hundreds of systems of tenanted planets rolling round them, we know that the secondary group of rocks *does* contain hundreds of tenanted beds, witnessing of as many systems of organic creation. If the Nebulæ may be planetary systems in the course of formation, we know, that the primary and transition rocks either show us the earth in the course of formation, as the future seat of life, or exhibit such life as already begun.

"How far that which Astronomy thus asserts as possible, is probable—what is the value of these possibilities of life in distant regions of the universe, we shall hereafter consider: but in what Geology asserts, the case is clear. It is no possibility, but a certainty. No one will now doubt that shells and skeletons, trunks, and leaves, prove animal and vegetable life to have existed. Even, therefore, if Astronomy could demonstrate all that her most fanciful disciples assume, Geology would still have a complete right to claim an equal hearing—to insist on having *her analogies* regarded. She would have a right to answer the questions of Astronomy, when she asks, How can we believe this? And to have her answer accepted."||

The great Fact sought to be estab-

|| *Essay*, pp. 191, 192.

lished in these two chapters is, that immense numbers of tribes of animals have tenanted the earth, for countless ages, before the present state of things, to which belong the existence and history of man, began to be. That many of our highest hills are formed of materials raised from the depth of ocean, is a proposition which cannot be doubted by any one who fairly examines the evidence of that fact which Nature offers; and the change, or changes, converting the bottom of the ocean into the centre of our greatest continents and highest mountains, were undoubtedly gradual, successive, and long continued. This is one of those prodigious facts developed by Geology, with as much certainty as any human inquiries admit of, and which may be set against some of the grandest facts established by Astronomy: but it is only introductory to another still more worthy of our profound wonder—the successive creation and disappearance of animal life on this globe. We entreat the attention of those of our readers, who have not hitherto devoted attention to such matters, to a brief and plain account of the evidence supporting such immense conclusions.

The masses of our mountain chains were deposited, as sediment, at the bottom of a sea, and there hardened; and consist entirely of *successive layers* of such sediment. How long must have been required for the deposit of a mass of ten thousand feet thick of these sedimentary strata? Surely a long course of ages. But these different strata are not found always lying level on one another, or parallel, but in a totally different position—the lower ones often of steep inclination, while the upper ones are level and wide-spreading, as if the lower had been broken up and thrown into disorder, and then a new series of strata deposited horizontally on their fragments. By whatever mysterious agency these complex rocky layers were formed, however, they contain the shells, and other remains, of creatures *living in the sea*, and in vast

profusion, as in those parts of the ocean now most alive with them! And each of these beds of shells, corals, and fishes, must have required, probably, centuries for the growth and development of the successive individuals and generations of which it consists; and it is reasonable to infer that each of the periods is at least as long as, and perhaps far longer than, that during which the dry land has had its present form!

But incomparably the most remarkable fact remains to be stated: that the various series of petrified tenants of these rocky sepulchres, or tiers of sepulchres, are almost all different from those now occupying our existing seas: different in *species*, and different in *genera*! Dead as individuals, extinct as species! Belonging to a terrestrial period, and an animal creation, long passed away, as though it had never existed! The series of wonders, however, does not stop here: these marine relics are intermingled with a vast series of different tribes, *fresh-water* and land animals and plants, successively, and at great intervals of time, occupying the earth, its seas, and rivers; their number, variety, multiplicity, and strangeness, infinitely exceeding anything that could have been previously imagined! Strata beneath strata all swarming with these mute chronicles of past animal and vegetable existence; becoming fewer and fewer in their general types, simpler and simpler in their organisation; such as have forced on the minds of geologists and naturalists the general impression that, as we descend in this long staircase of natural steps, we are brought in view of a state of the earth in which life was scantily manifested, so as to be near its earliest stages.* Nor must the reader imagine that these strata are slight layers: on the contrary, several are hundreds, and many thousands, of feet thick! Thus affording an astounding record of the time of their respective accumulation, and during which these successive groups of animals must have been brought

* *Plurality, &c.*, p. 146.

into existence, lived, and propagated their species.

"This series of creations, or of successive periods of life, is, no doubt, a very striking and startling fact, very different from anything which the imagination of man, in previous stages of investigation of the earth's condition, had conceived; but still, is established by evidence so complete, drawn from an examination and knowledge of the structures of living things so exact and careful, as to leave no doubt whatever of the reality of the fact, on the minds of those who have attended to the evidence, founded, as it is, upon the analogies, offices, anatomy, and combinations of organic structures. The progress of human knowledge on this subject has been carried on and established by the same alternations of bold conjectures and felicitous confirmations of them, of minute researches and large generalisations, which have given reality and solidity to the other most certain portions of human knowledge. That the strata of the earth, as we descend from the highest to the lowest, are distinguished in general by characteristic or organic fossils, and that these forms of organisation are different from those which now live on the earth, are truths as clearly and indisputably established in the minds of those who have the requisite knowledge of geology and natural history, as that the planets revolve round the sun, and the satellites round the planets."*

The question obviously arises, By what agency, and at what intervals, did this amazing series of organic creations succeed each other on the earth? Suffice it here to say, that in the opinion of the most eminent geologists, some of these epochs of organic transition had also been those of mechanical violence, on a vast and wonderful scale—as it were, an indefinite series of successive periods of alternate violence and repose. The general nature of such change is thus graphically sketched by the essayist:—

* *Plurality, &c.*, pp. 149, 150.

"It appeared that, at some of these epochs at least, the strata previously deposited, as if in comparative tranquillity, had been broken, thrust up from below, or drawn, or cast, downwards; so that strata which must at first have been nearly level, were thrown into positions highly inclined, fractured, set on edge, contorted, even inverted. Over the broken edges of these strata, thus disturbed and fractured, were found vast accumulations of the fragments which such rude treatment might naturally produce; these fragmentary ruins being spread in beds comparatively level, over the bristling edges of the subjacent rocks, as if deposited in the fluid which had overwhelmed the previous structure; and with few or no traces of life appearing in this mass of ruins: while in the strata which lay over them, and which appeared to have been the result of quieter times, new forms of organic life made their appearance in vast abundance."†

The dislocation, disruption, and contraction of the vast masses of previously existing mountains, by which their framework was broken up, and its ruins covered with beds of its own rubbish, many thousand feet thick, could hardly have taken place but in hundreds or thousands of years. Then, again, all these processes of deposition, thus arranging loose masses of materials into level beds, must have taken place *at the bottom of deep oceans*. And the beds of these oceans must have been elevated into the position of the mountain ridges which they now occupy, by some stupendous operation of nature, comparatively tranquil, since it has not materially disturbed these more level beds; ‡ and that operation must consequently have been long continued. When, therefore, we find strata bearing evidence of such a mode of deposit, and piled up to the height of thousands and tens of thousands of feet, we are naturally led to regard them as the production of myriads of years; and to add *new* myriads, as often as we are brought to new masses of strata

† *Ibid.*, pp. 151, 152.

‡ *Ibid.*, p. 153.

of the like kind; and again to interpolate new periods of the same order, to allow for the transition from one group to another.*

The best geologists and naturalists are utterly at fault, in attempting to account for the successive introduction of these numerous *new species*, at these immense intervals of time, except by referring them to the exercise of a series of distinct Acts of Creation. The chimerical notion of some natural cause effecting a transmutation of one series of organic forms into another, has been long exploded, as totally destitute of proof: and "the doctrine of the successive CREATION of species," says the essayist, "remains firmly established among geologists."† There is nothing known of the cosmical conditions of our globe, to contradict the terrestrial evidence for its vast antiquity as the seat of organic life,‡ says Dr Whewell: and then proceeds thus, in a passage which is well worth the reader's attention, and has excited the ire of Sir David Brewster:—

"If, for the sake of giving *definiteness to our notions*, we were to assume that the numbers which express the antiquity of these four periods—the present organic condition of the earth; the tertiary period of geologists which preceded that; the secondary period which was anterior to that; and the primary period which preceded the secondary—were on the same scale as the numbers which express these four magnitudes:—The magnitude of the earth; that of the solar system compared with the earth; the distance of the nearest fixed stars compared with the solar system; and the distance of the most remote nebulae compared with the nearest fixed stars,—there is in the evidence which geological science offers, nothing to contradict such an assumption. And as the infinite extent which we necessarily ascribe to space allows us to find room, without any mental difficulty, for the vast distances which astronomy reveals, and even leaves us rather embarrassed with the infinite extent which lies beyond our furthest

explorations; so the infinite duration which we, in like manner, necessarily ascribe to past time, makes it easy for us, so far as our powers of intellect are concerned, to go millions of millions of years backwards in order to trace the beginning of the earth's existence—the first step of terrestrial creation. * * * It is as easy for the mind of man to reason respecting a system which is billions or trillions of miles in extent, and has endured through the like number of years or centuries, as it is to reason about a system—the earth, for instance—which is forty millions of feet in extent, and has endured for a hundred thousand millions of seconds—that is, a few thousand years."

To return, however, to the course of the argument. We hear the oppressed observer asking, as he ascends this "long staircase of natural steps" which had brought time down to the mystic origin of animal existence; his eye dimmed with its efforts to "decipher," in the picturesque language of Sir David Brewster, "downwards, the pale and perishing alphabet of the Chronology of Life"—WHERE, ALL THIS WHILE, WAS MAN?

Were Europe at this moment to be submerged beneath the ocean, or placed under a vast rocky stratum, what countless proofs would present themselves to the exploring eyes of remote future geologists, of the existence of both Man and his handiwork!—of his own skeleton, of the products of his ingenuity and power, and the various implements and instruments with which he had effected them!

"If," says the essayist, "with the illustrious Cuvier, we liken the fossil remains, by which the geologist determines the age of his strata, to the medals and coins in which the antiquary finds the record of reigns and dynasties, we must still recollect that a coin really discloses a vast body of characteristics of man, to which there is nothing approaching in the previous condition of the world. *For how much does a coin, or medal,*

* Essay, 154. † Ibid., 166. ‡ Ibid., 155.

§ *More Worlds than One*, p. 52.

indicate?—Property; exchange; government; a standard of value; the arts of mining, assaying, coining, drawing, and sculpture; language, writing, reckoning; historical recollections, and the wish to be remembered by future ages. All this is involved in that small human work, a coin. If the fossil remains of animals may, as has been said, be termed medals struck by nature to record the epochs and their history, medals must be said to be not merely, like fossil remains, records of material things, but are the records of Thought, Purpose, Society, long continued, and improved, supplied with multiplied helps;—and are the permanent results, in a minute compass, of a vast progress, extending through all the ramifications of human life."

Not a coin only, but any, the very rudest conceivable work of human art would carry us to any extent backward, but it is not to be found! Man's existence and history incontestably belong to the existing condition of the earth; and the essayist now addresses himself to the two following propositions:—

First, That the existence and history of man are facts of an Entirely Different Order from any which existed in any of the previous states of the earth.

Secondly, That his history has occupied a series of years which, compared with geological periods, may be regarded as very brief and limited.

Here opens the "Argument from Geology"—and with it Chapter vi.

That the existence of man upon the earth is an event of an order entirely different from any previous part of the earth's history; and that there is no transition from animals to MAN, in even his most degraded, barbarian, and brutish condition, the essayist demonstrates, with affecting eloquence, and with great argumentative power. No doubt there are kinds of animals very intelligent and sagacious, and exceedingly disposed and adapted to companionship with man; but by elevating the intelligence of the brute, we do not make it become that of the

man; nor by making man barbarous, do we make him cease to be man. The brute has its special capacity, which may be carried very far, and can approach to, and exceed human sagacity; yet, however well trained, its progress is very narrowly limited;—and the creature soon reaches an impassable boundary. MAN, however, has a capacity, not for becoming sagacious, but *rational*,—or rather he has a capacity for PROGRESS, in virtue of his being rational.

In LANGUAGE, he possesses a wonderful vehicle, and an awful evidence of his peculiar and exalted condition and endowment.

"His bodily organs can, by a few scarcely perceptible motions, shape the air into sounds which express the kinds, properties, actions, and relation of things, under thousands of aspects, in forms infinitely more general and recondite than those in which they present themselves to his senses; and he can, by means of these forms, aided by the use of his senses, explore the boundless regions of space, the far recesses of past time, the order of nature, the working of the Author of nature. This man does, by the exercise of his reason, and by the use of language, a necessary implement of his reason for such purposes."

That brutes have anything which can be termed LANGUAGE, in the sense here spoken of, as admitting of *general* expressions, abstractions, address to number, eloquence, is utterly at variance with any interpretation we can put upon their proceedings. The broad distinction between instinct and reason, however obscure it may be, yet seems to be described most simply, by saying that the brutes do not apprehend their impressions *under general forms*, and that man does. Brutes are shut up in their sphere of sensation; passing from one impression to another by various associations, established by circumstances, but still having access to no wider intellectual region, through which lie lines of transition purely abstract and mental. Nor need we be disturbed in our conclusions by observing the condition of savage and

uncultivated tribes, ancient or modern—the Scythians and Barbarians, the Australians and Negroes. The history of man, in the earliest times, is as truly a history of a wonderful, intellectual, social, political, spiritual, creature, as it is at present. The savage and ignorant is not the state of nature out of which civilised life has everywhere emerged: their savage condition is one rather of civilisation degraded and lost, than of civilisation incipient and prospective. And even were it to be assumed to be otherwise—that man, naturally savage, had a tendency to become civilised—that TENDENCY is an endowment no less wonderful than those endowments which civilisation exhibits.

“The capacity is as extraordinary as the developed result, for the capacity involves the result. If savage man be the germ of the most highly civilised man, he differs from all other animal germs, as man differs from brute. And add to this again, that, in the tribes which we call savage, and whose condition most differs in external circumstances from ours, there are, after all, a vast mass of human attributes; thought, purpose, language, family relations; generally property, law, government, contract, arts, and knowledge, to no small extent; and in almost every case, religion. Even uncivilised man is an intellectual, moral, social, religious creature; nor is there, in his condition, any reason why he may not be a spiritual creature, in the highest sense in which the most civilised man can be so.”

When, however, we know not only what man is, but what he may become, both intellectually and morally, as we have already seen; when we cast our mind's eye over the history of the civilised section of our race, wherever authentic records of their sayings and doings exist, we find repeated and radiant instances of intellectual and moral greatness, rising into sublimity: such as compel us to admit, that man is incomparably the most perfect and highly endowed crea-

ture which appears to have ever existed on the earth.

“How far previous periods of animal existence were a necessary preparation of the earth as the habitation of man, or a gradual progression towards his existence, we need not now inquire. But this, at least, we may say, that man, now that he is here, forms a climax to all that has preceded; a term incomparably exceeding in value all the previous parts of the series; a complex and ornate capital to the subjacent column; a personage of vastly greater dignity and importance than all the preceding line of the procession.”*

If we are thus to regard man as the climax of the creation in space, as in time, “can we point out any characters,” finally asks the essayist, “which may tend to make it conceivable that the Creator should thus distinguish him, and care for him—should prepare his habitation, if it be so, by ages of chaotic and rudimentary life, and by accompanying orbs of brute and barren matter? If man be thus the head, the crowned head of the creation, is he worthy to be thus elevated? Has he any qualities which make it conceivable that, with such an array of preparation and accompaniment”—the reader will note the sudden and perhaps artful introduction of these elements of the question, the “*accompanying orbs!*”—“he should be placed upon the earth, his throne? Does any answer *now* occur to us after the views which have been presented to us? That answer,” continues the essayist, “is the one which has been already given:” the transcendent intellectual, moral, and religious character of man—such as warrants him in believing that God in very deed is not only mindful of him, but visits him.”†

This may be, the objector is conceived to say; but my difficulty haunts and harasses me: that, while man's residence is, with reference to the countless glistening orbs revealed by Astronomy, scarcely in the proportion of a single grain of sand to the entire

* *Essay*, pp. 198, 199. † *Ibid.*, p. 203.

terraqueous structure of our globe, I am required to believe that the Almighty has dealt with him, and with the speck in which he resides, in the awfully exceptional manner asserted in the Scriptures. Let us here remind the reader of a coarser, and an insolent and blasphemous, expression of this "difficulty"—or as he would have it, impossibility—by Thomas Paine, already quoted:—

"The system of a plurality of worlds renders the Christian faith at once little and ridiculous, and scatters it in the mind like feathers in the air: the two beliefs cannot be held together in the same mind." With such an opponent Dr Whewell expressly states, as we have seen, that he has no concern: he deals with a "difficulty felt by a friend:" wishing "rather to examine how to quiet the troubled and perplexed believer, than how to triumph over the dogmatical and self-satisfied unbeliever."

"Let the difficulty," he says, "be put in any way the objector pleases:" and the following four sections are worthy of a reflecting reader's best attention.

I. Is it that it is unworthy of the greatness and majesty of God, according to our conception of Him, to bestow such peculiar care on so SMALL A PART of His creation?†

But a narrow inspection of the atom of space assigned to man, proves that He *has* done so. He has made the period of mankind, though only a moment in the ages of animal life, the only period of Intelligence, Morality, Religion. If it be contrary to our conception of Him, to suppose Him to have done so, it is plain that these conceptions are wrong. God has not judged as to what is worthy of Him, as we have presumed to judge. He has deemed it worthy of Himself to bestow upon man this special care, though he occupy so small a portion of TIME:—why not, then, though he occupy so small a portion of SPACE?

II. Or is the difficulty this: That supposing the earth, alone, to be occupied by inhabitants, all the other

globes of the universe are WASTED?—turned to NO PURPOSE?‡

Is "waste" of this kind to be considered unsuited to the character of our Creator? But here again we have the like "waste" in the occupation of this earth. All its previous ages, its seas and its continents, have been "wasted" upon mere brute life: often, apparently, on the lowest, the least conscious forms of life:—upon sponges, coral, shell-fish. Why, then, should not the seas and continents of other planets be occupied with life of this order, or with no life at all? Who shall tell how many ages elapsed before this earth was tenanted by life at all? Will the occupation of a spot of land, or a little water, by the life of a sponge, a coral, or an oyster, save it from being "wasted?" If a spot of rock, or water, be sufficiently employed, by its being the mere seat of organisation, of however low and simple a type, why not, by its being the mere seat of attraction? cohesion? crystalline power? All parts of the universe appear pervaded by attraction, by forces of aggregation and atomic relation, by light and heat: why may not these be sufficient, in the eyes of the Creator, to prevent the space from being "wasted," as, during a great part of the earth's past history, and over vast portions of its mass in its present form, they are, as far as we are able to discover, actually held by Him to be sufficient? since these powers, or forces, appear all that occupy such portions! This notion, therefore, of the improbability of there being in the universe so vast an amount of "waste" spaces or "waste" bodies, as is implied in the notion that the earth alone is the seat of life, or of intelligence, is confuted by matter of fact, existing, in respect of vast spaces, waste districts, and especially waste times, upon our own earth. The *avoidance* of such "waste," according to our notions of waste, is no part of the economy of creation, so far as we can discern that economy in its most certain exemplification.

III. Or is the difficulty this: That

* *Ante*, p. 439.

† *Essay*, p. 194.

‡ *Ibid.*, p. 195.

giving such a peculiar dignity and importance to the earth is CONTRARY TO THE ANALOGY OF CREATION?*

This objection, be it remembered, assumes that there are so many globes similar to the earth, and like her revolving,—some accompanied as she is, by satellites,—on their axis, and that therefore it is reasonable to suppose the destination and office of all the same; that there are so many stars, each, like our sun, a source of light, probably also of heat; and that it is consequently reasonable to suppose their light and heat, like his, imparted, as from so many centres of systems, to uphold life; and that all this affords strong ground for believing all such planets, as well those of our own as of other systems, inhabited like our planet.

But the essayist again directs the eye of the questioner to the state of our own planet, as demonstrated by Geology, in order to show the precariousness, if not futility, of supposing such an analogy to exist. It would lead us to a palpably false conclusion, viz., that during all the vast successive periods of the Earth's history, that Earth was occupied with life of the same order, nay, even, that since the Earth is now the seat of an intelligent population, it must have been so in all its former conditions. For it was then able, and adapted, to support animal life, and that of creatures pretty closely resembling man† in physical structure. Nevertheless, if evidence go for anything, the Earth did not do so! "Even," says Dr Whewell, "those geologists who have dwelt most on the discovery of fossil monkeys, and other animals nearest to man, have not dreamed that there existed, before him, a race of rational, intelligent, and progressive creatures."‡ Here, however, the acute essayist is mistaken; as we shall presently see Sir David Brewster revelling in such a dream. As, then, the notion that one period of time in the Earth's his-

tory must resemble another in the character of its population, because it resembles it in physical conditions, is negatived by the history of the Earth itself; so the notion that one part of the universe must resemble another in its population, because it has a resemblance in physical conditions, is negatived, as a law of creation. Analogy really affords no support to such a notion.

IV. Nay, continues Dr Whewell,‡ we may go further: instead of the analogy of creation pointing to such entire resemblance of similar parts, it points in the opposite direction: it is not entire resemblance, but universal difference, that we discover: not the repetition of exactly similar cases, but a series of cases perpetually dissimilar, presents itself: not constancy, but change, perhaps advance: not one permanent and pervading scheme, but preparation, and completion of successive schemes: not uniformity, and a fixed type of existences, but progression and a climax.

Viewing the advent of Man, and what preceded that advent, it seems the analogy of nature that there should be inferior, as well as superior, provinces in the universe, and that the inferior may occupy an immensely larger portion of Time, than the superior. Why not, then, of Space?

"The earth was brute and inert, compared with its present condition; dark and chaotic, so far as the light of reason and intelligence are concerned, for countless centuries before man was created. Why then may not other parts of creation be still in this brute and inert and chaotic state, while the earth is under the influence of a higher exercise of creative power? If the earth was for ages a turbid abyss of lava and of mud, why may not Mars or Saturn be so still? If the germs of life were gradually and at long intervals inserted in the terrestrial slime, why may they not be just inserted, or not yet inserted, in Jupiter? Or why should we assume that the condition of these planets resembles ours, even so far as such suppositions im-

* *Essay*, p. 196.

† Even of monkeys there have been found fossil remains.

‡ *Essay*, p. 197.

§ *Ibid.*, p. 198.

ply? Why may they not, some or all of them, be barren masses of stone and metal, slag and scorix, dust and cinders? That some of them are composed of such materials, we have better reason to believe, than we have to believe anything else respecting their physical constitution, as we shall hereafter show. If, then, the earth be the sole inhabited spot in the work of creation, the oasis in the desert of our system, there is nothing in this contrary to the analogy of creation. But if, in some way which perhaps we cannot discover, the earth obtained, for accompaniments, mere chaotic and barren masses, as conditions of coming into its present state: as it may have required, for accompaniments, the brute and imperfect races of former animals, as conditions of coming into its present state, as the habitation of man; the analogy is against, and not in favour of, the belief that they too (the other masses, the planets, &c.) are habitations. The possibility that the planets are such rude masses, is quite as tenable, on astronomical grounds, as the possibility that the planets resemble the earth, in matters of which astronomy can tell us nothing. We say, therefore, that the example of geology refutes the argument drawn from the supposed analogy of one part of the universe with another; and suggests a strong suspicion that the force of analogy, better known, may tend in the opposite direction.*

We have now gone through a large portion, embracing two of the three sections into which we had divided this startling Essay; presenting as full and fair an account of it as is consistent with our limits. Though the author professes that he "does not pretend to disprove the Plurality of Worlds, but to deny the existence of arguments making the doctrine probable," his undisguised object is to assign cogent reasons for holding the opposite to be the true doctrine — the Unity of the World. What has gone before is, moreover, on the assumption that the other bodies of the universe are fitted, equally with the

* *Essay*, pp. 199, 200.

Earth, to be the abodes of life. Before passing on, however, to the remaining section of the Essay, which is decidedly hostile to that assumption, let us here introduce on the scene Dr Whewell's only hitherto avowed antagonist, Sir David Brewster.

Though it is impossible to treat otherwise than with much consideration whatever is published by this gentleman, we must express our regret, if on only his own account, that he did not more deliberately approach so formidable an opponent as Dr Whewell, and, as we are compelled to add, in a more calm and courteous spirit. We never read a performance less calculated than this Essay, — from its modesty and moderation of tone, and the grave and abstract nature of the topics which it discusses with such powerful logic, and such a profusion of knowledge of every kind, — to provoke an *acrimonious* (!) answer. It is happily rare, in recent times, for one of two philosophic disputants, to speak, as does Sir David Brewster, of the other's "exhibiting an amount of knowledge so massive as occasionally to smother his reason;" † "to ascribe his sentiments only to some morbid condition of the mental powers, which feeds upon paradox, and delights in doing violence to sentiments deeply cherished, and to opinions universally believed;" ‡ to characterise some of his reasonings as "dialectics in which a large dose of banter and ridicule is seasoned with a little condiment of science;" § and an elaborate argument, of great strength and originality, whether sound or not, as "the most ingenious, though shallow piece of sophistry which *we*! (Sir David Brewster) have encountered in modern times;" || to refer his "theories and speculations to no better a feeling than a love of notoriety." ¶ It is not to be supposed that Sir David was not aware who his opponent was; a circumstance which may well occasion extreme surprise at the tone

† *More Worlds than One*, p. 237 (we quote from the first edition).

‡ *Ibid.*, p. 230.

|| *Ibid.*, p. 202.

§ *Ibid.*, p. 240.

¶ *Ibid.*, p. 199.

adopted throughout "More Worlds than One."* In his preface he assigns, as a cause of his anger, that he found that "the author" of the Essay, "under a title calculated to mislead the public, had made an elaborate attack upon opinions consecrated, as Sir David had thought, by reason and revelation;"—that the author had not only adopted a theory (the Nebular) so universally condemned as a dangerous speculation, "but had taken a view of the condition of the solar system calculated to disparage the science of astronomy, and throw a doubt over the noblest of its truths." We dismiss this topic with a repetition of our regret, that so splendid a subject was not approached in a serener spirit; that greater respect was not shown by a contemporary for one of the most eminent men of the age; and that sufficient time was not taken, in order to avoid divers surprising *macule*, occurring in even the composition, and certain rash, unguarded, and highly objectionable expressions and speculations.

If Dr Whewell may be regarded as (*pace tanti viri!*) a sort of Star-Smasher, his opponent is in very truth a Star-Peopler. Though he admits that "there are some difficulties to be removed, and some additional analogies to be adduced, before the mind can admit the startling proposition † that the Sun, Moon, and all the satellites, are inhabited spheres"—yet he believes that they are: ‡ that all the supposed planets of their respective systems are so; as well as all the single stars, double stars, and *nebulae*, with all planets and satellites circling about them!—though "our *faltering reason utterly fails us!*" he owns,§ "when call-

* In fact, in a note to page 247, Sir David thus slyly alludes to those "conjectures" of Dr Whewell in his *Bridgewater Treatise*, to which we have referred, *ante*, pp. 439, 440:—"A very different opinion is stated by Dr Whewell, in his *Bridgewater Treatise*;" adding, after citing the passages, "The rest of the chapter, 'On the Vastness of the Universe,' is well worthy of the perusal of the reader, and forms a striking contrast with the opinions of the essayist."—This is perfectly fair, and also amusing.

† *More Worlds than One*, p. 98.

‡ *Ibid.*, p. 108.

§ *Ibid.*, p. 166.

ed on to believe that even the *Nebulae* must be surrendered to life and reason! Wherever there is matter *there must be life!*" One can by this time almost pardon the excitement, the alarm rather, and anger with which Sir David ruefully beheld Dr Whewell go forth on his exterminating expedition through Infinitude! It was like a father gazing on the ruthless slaughter of his offspring. Planet after planet, satellite after satellite, star after star, sun after sun, single suns and double suns, system after system, nebula after nebula, all disappeared before this sidereal Quixote! As for Jupiter and Saturn, the pet planets of Sir David, they were dealt with in a way perfectly shocking! The former turned out, to the disordered optics (as Sir David would say) and unsteady brain of the essayist, to be a sphere of water, with perhaps a few cinders at the centre, and peopled "with cartilaginous and glutinous monsters—boneless, watery, pulpy creatures, floating in the fluid;" while poor Saturn may be supposed turning aghast on being told that, for all his grand appearance, he was little else than a sphere of vapour, with a little water, tenanted, if at all, by "aqueous, gelatinous creatures, too sluggish almost to be deemed alive, floating in their ice-cold waters, shrouded for ever by their humid skies!" But talk hereafter of the pensive Moon? "She is a mere cinder! a collection of sheets of rigid slag, and inactive craters!" This could be borne no longer; so thus Sir David pours forth the grief and indignation of the Soul Astronomic, in a passage fraught with the spirit, and embodying the results, of his whole book, and which we give, as evidently laboured by the author, as far as his perturbation permitted, with peculiar care.

"Those ungenial minds that can be brought to believe that the earth is the only inhabited body in the universe, will have no difficulty in conceiving that it also might have been without inhabitants. Nay, if such minds are imbued with geological truth, they must admit that for mil-

lions of years the earth was without inhabitants; and hence we are led to the extraordinary result, that for millions of years there was not an intelligent creature in the vast dominions of the universal King; and that before the formation of the protozoic strata, there was neither a plant nor an animal throughout the infinity of space! During this long period of universal death, when Nature herself was asleep—the sun, with his magnificent attendants—the planets, with their faithful satellites—the stars in the binary systems—the solar system itself, were performing their daily, their annual, and their secular movements unseen, unheeded, and fulfilling no purpose that human reason can conceive; lamps lighting nothing—fires heating nothing—waters quenching nothing—clouds screening nothing—breezes fanning nothing—and everything around, mountain and valley, hill and dale, earth and ocean, all meaning nothing.

‘The stars

Did wander darkling in the eternal space.’ To our apprehension, such a condition of the earth, of the solar system, and of the sidereal universe, would be the same as that of our own globe if all its vessels of war and of commerce were traversing its seas with empty cabins and freightless holds; as if all the railways on its surface were in full activity without passengers and goods; and all our machinery beating the air and gnashing their iron teeth without work performed. A house without tenants, a city without citizens, present to our minds the same idea as a planet without life, and a universe without inhabitants. Why the house was built, why the city was founded, why the planet was made, and why the universe was created, it would be difficult even to conjecture. Equally great would be the difficulty were the planets shapeless lumps of matter, poised in ether, and still and motionless as the grave. But when we consider them as chiselled spheres, and teeming with inorganic beauty, and in full mechanical activity, per-

forming their appointed motions with such miraculous precision that their days and their years never err a second of time in hundreds of centuries, the difficulty of believing them to be without life is, if possible, immeasurably increased. To conceive any one material globe, whether a gigantic clod slumbering in space, or a noble planet equipped like our own, and duly performing its appointed task, to have no living occupants, or not in a state of preparation to receive them, seems to us one of those notions which could be harboured only in an ill-educated and ill-regulated mind—a mind without faith and without hope: but to conceive a whole universe of moving and revolving worlds in such a category, indicates, in our apprehension, a mind dead to feeling and shorn of reason.”*

“It is doubtless possible,” observes Sir David, however, a little further on,† as if with a sudden twinge of misgiving, “that the Almighty Architect of the universe may have had other objects in view, incomprehensible by us, than that of supporting animal and vegetable life in these magnificent spheres.” Would that Sir David would allow himself to be entirely influenced by this rational and devout sentiment! His book is, on the contrary, crammed with assertions from beginning to end, and of a peremptory and intolerant character, unknown alike to the spirit of humble piety and genuine philosophy.

The essayist, however, is not incapable of quiet humour: and the following pregnant passage is at least worthy to stand side by side with that which we have just quoted from his indignant and eloquent opponent:—

“Undoubtedly all true astronomers, taught caution and temperance of thought by the discipline of their magnificent science, abstain from founding such assumptions upon their discoveries. They know how necessary it is to be upon their guard against

* *More Worlds than One*, pp. 180, 183.

† *Ibid.*, p. 185.

the tricks which fancy plays with the senses; and if they see appearances of which they cannot interpret the meaning, they are content that they should have no meaning for them, till the due explanation comes. We have innumerable examples of this wise and cautious temper in all periods of astronomy. One has occurred lately. Several careful astronomers, observing the stars by day, had been surprised to see globes of light glide across the field of view of their telescopes, often in rapid succession, and in great numbers. They did not, as may be supposed, rush to the assumption that these globes were celestial bodies of a new kind, before unseen, and that, from the peculiarity of their appearance and movement, they were probably inhabited by beings of a peculiar kind. They proceeded differently. They altered the focus of their telescopes, looked with other glasses, made various changes and trials; and finally discovered that these globes of light were the winged seeds of certain plants, which were wafted through the air, and which, illuminated by the sun, were made globular by being at distances unsuited to the focus of the telescopes!"*

Before proceeding to give our readers some idea of the mode in which Sir David Brewster encounters Dr Whewell, let us offer a general observation concerning both these eminent gentlemen. While the latter exhibits, throughout his Essay, a spirit of candour and modesty, without one harsh expression or uncharitable insinuation with reference to the holder of doctrines which he is bent upon impugning with all his mental power and multifarious resources; the former, as we have seen, uses language at once heated, uncourteous, and unjustifiable: especially where he more than insinuates that his opponent, whose great knowledge and ability he admits, either deliberately countenances doctrines tending really to Atheism, or may be charitably believed "*ignorant of their tendency, and to have forgotten the truths of*

* *Essay*, chap. vii. sec. 17, p. 221.

Inspiration, and even those of Natural Religion."† To venture, however circuitously, to hint such grievous imputations upon an opponent whom he had the slightest reason for suspecting to be a gentleman of such high and responsible academic position, is an offence equally against personal courtesy and public propriety; as we think Sir David Brewster would, on reflection, acknowledge. Both Dr Whewell and Sir David Brewster must excuse us, if, scanning both through the cold medium of impartial criticism; their speculations, questions, or assertions appear to us disturbed and deflected by a leading prepossession or foregone conclusion, which we shall indicate in the words of each.

DR WHEWELL. — "The Earth is really the largest Planetary body in the Solar system; its domestic hearth, and the Only World [*i. e.*, collection of intelligent creatures] in the Universe."‡

SIR DAVID BREWSTER. — "Life is almost a property of matter [!] * * * Wherever there is Matter, there must be Life:—Life Physical, to enjoy its beauties: Life Moral, to worship its Maker; and Life Intellectual, to proclaim His wisdom and His power. * * * Universal Life upon Universal Matter, is an idea to which the mind instinctively clings. * * * Every star in the Heavens, and every point in a nebula which the most powerful telescope has not separated from its neighbour, is a sun surrounded by inhabited planets like our own. * * * In peopling such worlds with life and intelligence, we assign the cause of their existence; and when the mind is once alive to this great Truth, it cannot fail to realise the grand combination of infinity of life with infinity of matter."§

The composition of Sir David Brewster, though occasionally too declamatory and rhetorical, and so far lacking the dignified simplicity befitting

† *More Worlds than One*, p. 248.

‡ *Essay*, chap. x. sec. 10, pp. 308, 309; chap. xii. sec. 1, p. 359.

§ *More Worlds than One*, pp. 178, 179.

the subjects with which he deals, has much merit. It is easy, vivid, and vigorous, but will bear retrenchment, and lowering of tone. As to the substantial texture of his work, we think it betrays, in almost every page, haste and impetuosity. Another feature of "More Worlds than One," is a manifest desire *provocare ad populum*—a greater anxiety, in the first instance, to catch the ear of the million, than to convince the "fit audience, though few."

Now, however, to his work; and, as we have already said, on him lies the labouring oar of proof. All that his opponent professes to do, is to ask for arguments "rendering probable" that "doctrine" which Sir David pledges himself to demonstrate to be not only the "hope" of the Christian, but the "creed" of the philosopher: as much, that is, an article of his belief, as the doctrines of attraction and gravitation, or the existence of demonstrable astronomical facts.

He commences with a brief introduction, sketching, but in a perfunctory manner, the growth of the belief in a plurality of worlds—one steadily and firmly increasing in strength, he says, till it encountered the rude shock of the essayist, whose "very remarkable work" is "ably written," and who "defends ingeniously his novel and extraordinary views:" "the direct tendency of which is to ridicule and bring into contempt the grand discoveries in sidereal astronomy by which the last century has been distinguished." In his next chapter, Sir David discusses "the religious aspect of the question," representing man, especially the philosopher, as always having pined after a knowledge of the scene of his future existence. He declares that neither the Old nor the New Testament contains "a single expression incompatible with the great truth, that there are 'other worlds than our own which are the seats of life and intelligence;' but that, on the contrary, there are 'other passages which are inexplicable without admitting it to be true.'" He regards, as we have seen, the noble exclamation of the

Psalmist, "What is man?" as a "positive argument for a plurality of worlds;" and "cannot doubt" that he was gifted with a plenary knowledge of the starry system, inhabited as Sir David would have it to be! Dr Chalmers, let us remark, in passing, expressed himself differently, and with a more becoming reserve: "It is not for us to say whether inspiration revealed to the Psalmist the wonders of the modern astronomy," but "even though the mind be a perfect stranger to the science of these enlightened times, the heavens present a great and an elevating spectacle, the contemplation of which awakened the piety of the Psalmist"—a view in which Dr Whewell concurs. Sir David then comes to consider the doctrine of "Man, in his future state of existence, consisting, as at present, of a spiritual nature residing in a corporeal frame." We must, therefore, he says, find for the race of Adam, "*if not for the races which preceded him!*"* "a material home upon which he may reside, or from which he may travel to other localities in the universe." That house, continues this philosopher, cannot be the earth, for it will not be big enough—there will be such a "population as the habitable parts of our globe could not possibly accommodate;" wherefore, "*we can scarcely doubt* that their future abode must be on some of the primary or secondary planets of the solar system! whose inhabitants have ceased to exist, like those on the earth; or on planets which have long been in a state of preparation, as our earth was, for the advent of intellectual life!"

Here, then, is the "creed of the philosopher," as well as "the hope of the Christian!" Passing, according to the order adopted in this paper, from the first chapter, "Religious Aspect of the Question," we alight on the seventh, entitled, "*Religious Difficulties.*" We entertain too much consideration for Sir David Brewster as a gentleman of great distinction in the scientific world, to speak harshly

* *More Worlds than One*, p. 18.

of anything falling from his pen; but we think ourselves justified in questioning whether this chapter—dealing with speculations of an awful nature, among which the greatest religious and philosophical intellects tremble as they “go sounding on their dim and perilous way”—shows him equal to cope with his experienced, wary, and very learned opponent; whom every page devoted to such topics shows to have fixed the *DIFFICULTY*, with which he proposed to deal, fully and steadily before his eyes, in all its moral, metaphysical, and philosophical bearings, and to have discussed it at once luminously, cautiously, and reverently. We shall content ourselves with briefly indicating Sir David's course of observation on that “difficulty;” leaving it to the discreet reader to form his own judgment whether Sir David has left the difficulty where he found it, or removed, lessened, or enhanced it.

Dr Whewell, in his *Dialogue*, thus temperately and effectively deals with this section of his opponent's lucubrations:—

“If he cannot see the difficulties which the question involves, he is not one of those for whom I wrote! I am sorry that he has allowed me to obliterate, metaphysically, the brightness of his perceptions.

“A. He does, however, speak of the religious difficulty; and says that Dr Chalmers ‘has rather cut than untied the knot.’

“His own solution of the question concerning the redemption of other worlds appears to be this, that the provision made for the redemption of man, by what took place upon earth eighteen hundred years ago, may have extended its influence to other worlds.

“Z.* In reply to which astronomical-theological hypothesis three remarks offer themselves: In the first place, the hypothesis is entirely without warrant or countenance in the revelation from which all our knowledge of the scheme of redemption is

* “A.” indicates the objector; “Z.” the author.

derived; in the second place, the events which took place upon earth eighteen hundred years ago, were connected with a *train of events in the history of man*, which had begun at the creation of man, and extended through all the intervening ages; and the bearing of this whole series of events upon the condition of the inhabitants of other worlds must be so different from its bearing on the condition of man, that the hypothesis needs a dozen other auxiliary hypotheses to make it intelligible; and, in the third place, this hypothesis, making the earth, insignificant as it seems to be in the astronomical scheme, the centre of the theological scheme, ascribes to the earth a peculiar distinction, quite as much at variance with the analogies of the planets to one another, as the supposition that the earth alone is inhabited; to say nothing of the bearing of the critic's hypothesis on the other systems that encircle other suns.”†

“A. Your critic does not allow, as I have already told you, that man and his history are an especial care of God. He says, ‘The lily that neither toils nor spins; the ravens that neither sow nor reap; the sparrows, though of less value than man; the crushed insect; the broken planet; the twinkling star; are all as special objects of God's care as the wise elephant, the illiterate biped, the presumptuous philosopher, and the great globe itself, and all that it inherits.’

“Z. But surely a scheme for the redemption of man, bound up with the whole history of man, and establishing a special relation between man and God, shows a care more special than the Divine operation which clothes the lily and feeds the sparrow; and this was implied, when it was said, ‘Fear not, ye are of more value than many sparrows.’”

“In freely discussing the subject of a *Plurality of Worlds*,” confidently observes Sir David, “there can be no collision between Reason and Revelation.” He regrets the extravagant conclusion of some, that the inhabi-

† *Dialogue*, pp. 62-64.

tants of all planets but our own "are sinless and immortal beings that never broke the Divine Law, and enjoying that perfect felicity reserved for only a few of the less favoured occupants of earth. Thus chained to a planet," he mournfully remarks, "the lowest and most unfortunate in the universe, the philosopher, with all his analogies broken down, may justly renounce his faith in a Plurality of Worlds, and rejoice in the more limited but safer creed of the anti-Pluralist author, who makes the earth the only world in the universe, and the special object of God's paternal care."* He proceeds, in comfortable accordance with "men of lofty minds, and undoubted piety," to regard the existence of Moral Evil as a necessary part of the general scheme of the universe, and consequently affecting all its Rational Inhabitants.† With Huygens, he concludes that the inhabitants of the other planets must be endowed with the same vices and virtues as man, otherwise they would be far more degraded than the occupants of the earth. He "rejects the idea that the inhabitants of the planets do not require a Saviour; and maintains the more rational opinion, that they stand in the same moral relation to their Maker as the inhabitants of the earth; and seeks for a solution of the difficulty—how can there be inhabitants in the planets, when God had but One Son, whom He could send to save them? If we can give a satisfactory answer to this question, it may destroy the objections of the Infidel, while it relieves the Christian from his difficulties."‡ "When our Saviour died, the influence of His death extended backward, in the Past, to millions who never heard His name; in the Future, to millions who never will hear it, a Force which did not vary with any function of the distance.§ Emanating from the *middle* planet of the system."

— The earth the *middle* planet of the system! How is this? In an earlier portion of his book (p. 56), Sir David had demonstrated that "our

earth is neither the *middle* [his own italics] planet, nor the planet *nearest* the sun, nor the planet furthest from that luminary: that therefore the earth, as a planet, has no pre-eminence in the solar system, to induce us to believe that it is the only inhabited world. *Jupiter* is the *middle* planet (p. 55), and is otherwise highly distinguished!" How is this? Can the two passages containing such direct contradictions have emanated from the same scientific controversialist?

— "Emanating from the middle planet of the system, why may it not have extended to *them all*, to the Planetary Races in the Past, and to the Planetary Races in the Future? But to bring our argument more within the reach of an ordinary understanding"—he supposes our earth split into two parts! the old world and the new, as Biela's comet is supposed to have been divided in 1846, at the beginning of the Christian era!||—"would not *both fragments* have shared in the beneficence of the Cross—the penitent on the shores of the Mississippi, as richly as the pilgrim on the banks of the Jordan? Should this view prove unsatisfactory to the anxious inquirer, we may suggest another sentiment, even though we ourselves may not admit it into our creed. May not the Divine Nature, which can neither suffer, nor die, and which, in our planet, once only clothed itself in humanity, *resume elsewhere a physical form, and expiate the guilt of unnumbered worlds?*"¶

We repeat, that we abstain from offering any of the stern strictures which these passages almost extort from us.

He denies that either "a Theist or Christian of the smallest mental capacity could imagine the Almighty prevented by the many worlds under His management, from taking care of the earth and its inhabitants; and denies that if they do, the discoveries of the microscope have the slightest tendency to remove them;" differing here from both Dr Chalmers and Dr Whewell: and we ourselves are not

* *More Worlds than One*, p. 131. † *Ibid.*

‡ *Ibid.*, p. 138.

§ *Ibid.*, p. 139.

|| *Ibid.*, p. 140.

¶ *Ibid.*, pp. 141-2.

disposed to pronounce an opinion upon the matter.

Sir David proceeds to declare himself incompetent to comprehend the Difficulty "put in a form so unintelligible" by the essayist—that of a kind of existence, similar to that of men, in respect of their intellectual, moral, and spiritual character, and its *progressive* development, existing in any region occupied by beings other than man. He denies that Progression has been the character of the history of man,* but rather frequent and vast retrogressions, ever since the Fall; and asks "which of these ever-changing conditions of humanity is the *unique* condition of the essayist—incapable of repetition in the scheme of the Universe?"† Why may there not be an intermediate race between that of man and the angelic beings of Scripture, where human reason shall pass into the highest form of created mind, and human affections into their noblest development?—

"Why may not the intelligence of the spheres be ordained for the study of regions and objects unstudied and unknown on earth? Why may not labour have a better commission than to earn its bread by the sweat of its brow? Why may it not pluck its loaf from the bread-fruit tree, or gather its manna from the ground, or draw its wine from the bleeding vessels of the vine, or *inhale its anodyne breath from the paradise gas of its atmosphere*?"‡

And Sir David thus concludes the chapter:—

"The difficulties we have been considering, in so far as they are of a religious character, have been very unwisely introduced into the question of a Plurality of Worlds. We are not entitled to remonstrate with the sceptic; but we venture to doubt the soundness of that philosopher's judgment, who thinks that the truths of natural religion are affected by a belief in planetary races, and the reality of that Christian's faith who considers it to be endangered by a belief

that there are other Worlds than his own."

This last paragraph induces us to go so far as to doubt whether Sir David Brewster has really or deliberately addressed his understanding to the subject to which so large a portion of the most elaborate reasonings of Dr Whewell have been directed; and if there lurk in the paragraph which we have last quoted, an insinuation against the sincerity of his opponent's belief in the Christian religion, it is utterly unpardonable.

Sir David does not quarrel with the essayist's account of the constitution of man; and we must now see how he deals with his arguments drawn from Geology.

Sir David "is not disposed to grudge the geologist even periods so marvellous" as "millions of years required for the formation of strata, provided they be considered as merely hypothetical;" and admits that "our seas and continents have nearly the same locality, and cover nearly the same area, as they did at the creation of Adam;" but demurs to the conclusion that the earth was prepared for man by causes operating so gradually as the diurnal changes going on around us. "Why may not the Almighty have deposited the earth's strata, during the whole period of its formation, by a *rapid* precipitation of their atoms from the waters which suspended them, so as to reduce the period of the earth's formation to little more than the united generations of the different orders of plants and animals constituting its organic remains? Why not still further shorten the period, by supposing that plants and animals, requiring, in our day, a century for their development, may in primitive times have shot up in rank luxuriance, and been ready, in a few *days*! or months! or years, for the great *purpose of exhibiting*, by their geological distribution, the progressive formation of the earth?"§

These questions, of which a myriad similar ones might be asked by any one, we leave to our geological readers;

* *More Worlds than One*, p. 151.

† *Ibid.*, p. 152.

‡ *Ibid.*, p. 47.

§ *Ibid.*, pp. 44-47.

and hasten to inform them, that, as it appears to us, in involuntary homage to the powerful reasonings of his opponent, Sir David Brewster is fain to question the "inference that man did not exist during the period of the earth's formation;"* and to suggest that there may have existed intellectual races in at present unexplored continental localities, or the immense regions of the earth now under water! — "The future of geology may be pregnant with startling discoveries of the remains of intellectual races, even *beneath* the primitive Azoic† formations of the earth! . . . Who can tell what sleeps beyond? Another creation may lie beneath! more glorious creatures may be entombed there! the mortal coils of beings more lovely, more pure, more divine than man, may yet read to us the unexpected lesson that we have not been the first, and may not be the last, of the intellectual race!"‡ Is he who can entertain and publish conjectures like these, entitled to stigmatise so severely those of other speculators, as "inconceivable absurdities, which no sane mind can cherish—suppositions too ridiculous even for a writer of romance!" This wild licence given to the fancy, may not be amiss in a poet, whose privilege it is that his "eye in a fine phrensy rolling may"

"give to airy nothing,
A local habitation and a name;"

but when set in the scale, by a man of science, against the solemnly magnificent array of facts in the earth's history established by Geology, may be somewhat summarily discarded.

The essayist suggests a most striking and original analogy between man's relation to Time and to Space; but it appears to us not understood, in either its scope or nature, by Sir David Brewster. At this we are as much surprised, as at the roughness with which he characterises the argu-

ment, as "the most ingenious though shallow piece of sophistry he has ever encountered in modern dialectics." The essayist suggests a comparison between the numbers expressing the four magnitudes and distances, of the earth, the solar system, the fixed stars, and the nebulae, and the numbers expressing the antiquity of the four geological periods, but only "for the sake of giving definiteness to our notions." Sir David abstains from quoting these last expressions, and alleges that the essayist, "quitting the ground of analogy," founds an elaborate argument on the mutual relation of an atom of time and an atom of space. The "argument" Sir David thus presents to his readers, the capital and italic letters being his own: "That is, *the earth, the ATOM OF SPACE, is the only one of the planetary and sidereal worlds that is inhabited, because it was so long without inhabitants, and has been occupied only an ATOM OF TIME.*"§ "If any of our readers," he heatedly adds, "see the force of this argument, they must possess an acuteness of perception to which we lay no claim. To us, it is not only illogical; it is a mere sound in the ear, without any sense in the brain." This is the language possibly befitting an irritated professor towards an ignorant and conceited student, but hardly suitable when Sir David Brewster is speaking of such an antagonist as he cannot but know that he has to deal with.

It does not appear to us the essayist's attempt, or purpose, to establish any arbitrary absolute *relation* between time and space, or definite proportions of either, as concurring or alternative elements for determining the probability of a plurality of worlds. But he says to the dogmatic astronomical objector to Christianity, Such arguments as you have hitherto derived from *your* consideration of SPACE, MULTITUDE, and MAGNITUDE, for the purpose of depressing man into a being beneath his Maker's special notice, I encounter by arguments derived from recent disclosures concerning another condition of existence — DURATION, or

§ Ibid., p. 206.

* *More Worlds than One*, p. 47.

† It may be proper to intimate to persons not familiar with such expressions, that the word "Azoic" signifies those primary rocks which contain no traces of organic life, no remains of plants or animals.

‡ *More Worlds than One*, p. 52.

TIME. Protesting that neither Time nor Space has any true connection with the subject, nevertheless I will turn your own weapons against yourself. My argument from Time shall at least neutralise yours from Space: mine shall involve the conditions of yours, fraught with their supposed irresistible force, and falsify them in fact, as forming premises whence may be deduced derogatory inferences concerning man. The essayist's ingenious and suggestive argument is intended not to prove an opinion, but to *remove an objection*; which, according to the profound thinker, Bishop Butler, is the proper office of analogy. It is asked, for instance, *how* can you suppose that man, such as he is represented to be, occupies only an immeasurably minute fraction of existing matter? And it is answered, I find that man occupies only an immeasurably minute fraction of elapsed time: and this is, to me, an answer to the "*How*," as concluding improbability. *How*, is balanced against *How*: difficulty against difficulty: they neutralise each other, and leave the great question, the great reality, standing as it did, before either was suggested, to be dealt with according to such evidence as God has vouchsafed us. We, therefore, do not see that the essayist is driven to say, as Sir David Brewster alleges he is, either that because man has occupied only an atom of space, he must live only an atom of time on the earth;* or that because he has lived only an atom of time, he must occupy but an atom of space. In dismissing this leading portion of the essayist's reasonings, we shall say only that we consider it worthy of the attention of all persons occupied in speculations of this nature, as calculated to suggest trains of novel, profitable, and deeply interesting reflection.

Thus far the essayist, as followed by his opponent, on the assumption that the other bodies of the universe are fitted, equally with the earth, to be the abodes of life. *But are they?* Here we are brought to the last stage

* *More Worlds than One*, pp. 206, 207.

of the essayist's speculations: he asking, What physical evidence have we that the other bodies of the solar system,—besides the earth,—the fixed stars, and the nebulae, are structures capable of supporting human life, of being inhabited by rational and moral beings?

The great question, in its physical aspect, is now fully before us: Is there that analogy on which the pluralist relies?

For the existence of life several conditions must concur; and any of these failing, life, so far as we know anything about it, is impossible. Not air, only, and moisture, are necessary, but a certain temperature, neither too hot nor too cold, and a certain consistence, on which the living frame can rest. Without the other conditions, an atmosphere alone does not make life possible; still less, prove its existence. A globe of red-hot metal, or of solid ice, however well provided with an atmosphere, could not be inhabited, so far as we can conceive. The old maxim of the logicians is true: that it requires all the conditions to establish the affirmative, but that the negative of any one proves the negative.

First, as to the smallest tenants of our system, the thirty† planetoids, some of which are certainly no larger than Mont Blanc, moving in the great space between Mars and Jupiter, in orbits so complex and anomalous as to have suggested to most astronomers (Sir David Brewster boldly states it as almost placed beyond doubt) that they may be portions of a shattered planet, once circling between Mars and Jupiter; and fragments are being discovered latterly almost monthly! "It may yet, however," discreetly observes Mr Hind, who has discovered so many of these strange occupants of our system, "be found that these small bodies, so far from being portions of the wreck of a great planet,

† A thirtieth planetoid was discovered by Mr Hind since the publication of the second edition of the *Essay*, and a thirty-first, while the third edition was being printed. It is believed that even since then, two more have been discovered! [December 1854.]

were created in their present state, for some wise purpose, which the progress of astronomy in future ages may eventually unfold."

Sir David Brewster dare not venture to suggest that these planetoids are inhabited, or in a condition to become so, any more than meteoric stones, which modern science regards as masses of matter, moving, like the planets, in the celestial spaces, subject to the gravitating attraction of the sun; the earth encountering them occasionally, either striking directly upon them, or approaching to them so closely that they are drawn by the terrestrial attraction, first within the atmosphere, and afterwards to the earth's surface.* Here our essayist gives a thrust at our pluralist not to be parried: asking him why he shrunk from asserting the planetoids and meteoric stones to be inhabited? If it be because of their being found to be uninhabited, or of their smallness, then "the argument that they are inhabited *because* they are planets, fails him."†

"There is, then," says elsewhere the wary essayist,‡ "a degree of smallness which makes you reject the supposition of inhabitants. But where does that degree of smallness begin? The surface of *Mars* is only one-fourth that of the Earth. Moreover, if you allow all the planetoids to be uninhabited, those planets which you acknowledge to be probably uninhabited, far outnumber those with regard to which even the most resolute Pluralist holds to be inhabited. The majority swells every year: the planetoids are now [upwards of] thirty. The fact of a planet being inhabited, then, is, at any rate, rather the exception than the rule; and therefore must be proved, in each case, by special evidence. Of such evidence I know not a trace!"

We may add, also, that Dr Lardner, vouched by Sir David Brewster, as we shall soon see, to be a thoroughly competent witness, gives up the plane-

toids as seats of habitation for animal life.§

Let us now, would say our essayist, proceed on our negative tour, so to speak, and hasten to pay our respects to the Moon, our nearest neighbour, and whose distance from the Sun is admitted to adapt her, so far, for habitation. || If it appear, by strong evidence, that the Moon is not inhabited, then there is an end of the general principle, that *all* the bodies of the solar system are inhabited, and that we must begin our speculation about each with this assumption. If the Moon appear not to be inhabited, then, it would seem, the belief that each special body in the system is inhabited, must depend upon reasons specially belonging to that body, and cannot be taken for granted without these reasons.¶ Now, as to the Moon, we have latterly acquired the means of making such exact and minute inquiries, that at the meeting of the British Association at Hull last year [1853], Mr Phillips, an eminent geologist, stated that astronomers can discern the shape of a spot on the Moon's surface, only a few hundred feet in breadth. At the recent [Sept. 1854] meeting of the same Association at Liverpool, moreover, the most assiduous and able observants of the Moon reasserted with increased confidence their conviction that there is not upon her surface either water, vapour, air, or active volcanoes.** Passing by, however, the essayist's brief but able account of the physical condition

§ *Museum*, &c., vol. i. p. 64.

|| P. 271. Her distance from us is 240,000 miles; and our essayist, by the way, tells us (chap. ix. sec. 7) that "a railroad carriage, at its ordinary rate of travelling, would reach her in a month." We should not like, however, to travel by the Lunar Express, but would prefer the Parliamentary train, and hope, starting from the Hanwell station, to get to the terminus in a couple of years or so. Good Bishop Wilkins intended to be taken up by birds of flight trained for the purpose! When the Duke of Newcastle asked him where he intended to bait by the way, he answered, "Your Grace is the last person to ask me the question, having built so many castles in the air!" In the third edition, the month is expanded into six.

¶ *Essay*, p. 272.

** *Ibid.*, Pref. to Third Ed., p. viii.

* LARDNER, *Museum of Science and Art*, vol. i. p. 156.

† *Dialogue*, p. 60.

‡ *Ibid.*, p. 28.

of this satellite of ours, we will cite the recent testimony of one accredited by Sir David Brewster* as "a mathematician and a natural philosopher, who has studied more than any preceding writer the analogies between the Earth and the other planets"—Dr Lardner; who, in the third volume of the work placed at the head of this article, thus concludes his elaborate account of the Moon, as now regarded by the most enlightened astronomers—after proving it to be "as exempt from an atmosphere as is the utterly exhausted receiver of a good air-pump!"

"In fine, the entire geographical character of the moon, thus ascertained by long-continued and exact telescopic surveys, leads to the conclusion, that no analogy exists between it and the earth which could confer any probability on the conjecture that it fulfils the same purposes in the economy of the universe; and we must infer, that whatever be its uses in the solar system, or in the general purposes of creation, it is not a world inhabited by organised races such as those to which the earth is appropriated."†

We must leave Sir David and Dr Lardner to settle their small amount of differences on this score together; for Sir David will have it that "the moon exhibits such proofs of an atmosphere that we have a new ground from analogy for believing that she either has, or is in a state of preparation for receiving, inhabitants;"‡ who, "with monuments of their hands," he "hopes may be discovered with some magnificent telescope which may be constructed!"§ And he is compelled to believe that "all the other unseen satellites of the solar system, are homes to animal and intellectual life!"||

The essayist would seem not to have deemed it necessary to deprive the Sun of inhabitants; but our confident Pluralist will not surrender the stupendous body so easily. His friend Dr Lardner properly regards it "as a vast globular furnace, the heat emit-

ted from each square foot of which is seven times greater than the heat issuing from a square foot of the fiercest blast-furnace: to what agency the light and heat are due, no one being able to do more than conjecture. According to our hypothesis, it is a great ELECTRIC LIGHT in the centre of the system;"¶ and "entirely removed from all analogy with the earth"—"utterly unsuited for the habitation of organised tribes."** Nevertheless Sir David stoutly believes that this great electric light, "the sun, is richly stored with inhabitants," the probability "being doubtless greatly increased by the simple consideration of its enormous size," a "domain so extensive, so blessed with perpetual light;" and, beyond all this, it would seem that "if it be inhabited," it is probably "occupied by the highest orders of intelligence!"†† who, however, are allowed to enjoy their picturesque, and, it must be owned, somewhat peculiar, but doubtless blessed position, only by peeping every now and then through the sun's spots, and so "seeing distinctly the planets and stars"—in fact, "large portions of the heavens!"‡‡ Perhaps it may be thought that this is not a very handsome way of dealing with such exalted beings!

The essayist has now our seven principal sister-planets to deal with, the two *infra*-terrestrial, Mercury and Venus; and the five *extra*-terrestrial, Mars, Jupiter, Saturn, Uranus, and Neptune: and as to all these the question continues, do they so *resemble* the earth in physical conditions, as to lead us safely to the conclusion that they resemble it in that other capital particular, of being the habitations of intellectual and moral beings? Here, be it observed, that every symptom of unlikeness which the essayist can detect, greatly augments the burthen of proof incumbent upon his opponents.

When it was discovered that the

¶ *Museum*, &c., vol. iii. p. 112.

** *Ibid.*, vol. i. p. 63.

†† *More Worlds than One*, pp. 97, 101.

‡‡ *Id.* pp. 99, 100.

* Pp. 80, 81. † *Museum*, &c., vol. iii. p. 48.
‡ P. 108. § P. 24. || P. 109.

old planets in certain important particulars resembled the earth, being opaque and solid bodies, having similar motions round the sun and on their own axes, some accompanied by satellites, and all having arrangements producing day and night, summer and winter, who could help wondering whether they must not also have inhabitants, reckoning and regulating their lives and employments by days, months, and years? This was, at most, however, a mere guess or conjecture; and whether it is now more probable than then, depends on the intervening progress of astronomy and science in general. Have subsequent discoveries strengthened or impugned the validity of the conjecture? The limits of our system have been since vastly extended by the discovery of Uranus and Neptune; and the planetary sisterhood has also increased in number by upwards of thirty little and very eccentric ones.

Now, as to NEPTUNE, says the essayist, in substance, what reason has a sensible person for believing it peopled, as the earth is, by human beings, *i. e.*, consisting of body and soul? He is thirty times further than we are from the sun, which will appear to it a mere star—about the size of Jupiter to us; and Neptune's light and heat will be nine hundred times less than ours!* If it, nevertheless, contain animal and intellectual life, we must try to conceive how they get on with such a *modicum* of those useful elements!

If any planet have sufficient light, heat, clouds, winds, and a due adjustment of gravity, and the strength of the materials of which organisation consist, there *may* be found in it life of some sort or other. Now we can measure and weigh the planets, exactly, by the law of gravitation, which embraces every particle of matter in our system; and the mass of our earth we have found to be only five times heavier than water. Comparing it with JUPITER, the bulk of which is thirteen hundred and thirty-one times greater than that of the Earth, his density is,

* *Essay*, p. 278.

as a whole, only a quarter of that of the Earth, not greater than it would be as a sphere of water. Such he is conjectured to be; and his belts lines of clouds, fed with vapours raised by the sun's action on such a watery sphere—the lines of such clouds being of so steady and determined a character, in consequence of his great rotatory velocity. Equal bulk for equal bulk, he is lighter than the Earth, but of course much heavier altogether; and as he is five times the Earth's distance from the Sun, he must get a proportionally smaller amount of light and heat, and even that diminished by the clouds enveloping him to so great an extent. What a low degree of vitality, and what kind of organisation must animal existence possess, says Dr Whewell, to suit such physical conditions, especially with reference to gravity, which at his surface is nearly two and a half times that on the Earth! Boneless, watery, pulpy, must be the inhabitants of the cold waters; or they may be frozen so far as to exclude the idea of animal existence; or it may be restricted to shallow parts in a planet of ice.† But if this be so, to what end his gorgeous array of satellites?—his four moons? "Precisely the same," answers our pertinacious essayist, "as the use of our moon during the countless ages before man was placed on the earth, while it was tenanted by corals, madrepores, shell-fish, belemnites, the cartilaginous fishes of the old red sandstone, or the Saurian monsters of the lias. With these *differences*, asks the essayist, complacently, what becomes of analogy—of resemblances justifying our belief that Jupiter is inhabited like ourselves?

To this answers Sir David Brewster, substantially, thus. Jupiter's great size "is alone a proof that it must have been made for some grand and useful purpose:" it is flattened at its poles; revolves on its axis in nearly ten hours; has different climates and seasons; and is abundantly illuminated, in the short absence of the sun, by its four moons, giving him, in fact,

† *Ibid.*, pp. 281, 289.

"perpetual moonlight." *Why* does the sun give it days, nights, and years? *Why* do its moons irradiate its continents and seas? Its equatorial breezes blow perpetually over its plains? To what purpose could such a gigantic world have been framed, unless to supply the wants, and minister to the happiness, of living beings? Still, it is admitted, with a sort of qualm,* "that certain objections or difficulties naturally present themselves." The distance of Jupiter from the sun precludes the possibility of sufficient light and heat from that quarter, to support either such vegetable or animal life as exists on the earth; the cold must be very intense—its rivers and seas must be tracks and fields of ice.† But it may be answered, that the temperature of a planet

* BREWSTER, p. 60.

† To descend, for a moment, to details. Sir David Brewster will not allow himself to be driven to elect between the icy or watery constituency of Jupiter. He declares direct experiment to have proved that it is neither: that if Jupiter were a sphere of water, the light reflected from his surface, when in his quadratures, must contain, as it does not, a large portion of polarised light; and if his crust consist of mountains, precipices, and rocks of ice, some of whose faces must occasionally reflect the incident light at nearly the polarising angle, the polarisation of their light would be distinctly indicated. The essayist, in his *Dialogue*, "doubts whether the remark is applicable; for Jupiter's watery or icy mass must be clothed in a thick stratum of air, and aqueous vapour, and clouds. But even were the planet free from clouds, the parts of the planet's surface from which polarised light would be reflected, would be only as points compared with the whole surface; and the common light reflected from the whole surface would quite overwhelm and obliterate the polarised light."—*Dial.* p. 64. We cite this as a sample of the ingenuity of both disputants in a point of scientific contest. Whether Sir David's conjectural polarised light be or be not thus obliterated, in our view the item in dispute is quite lost in the general question, and the great principles on which its solution depends. If driven to elect between ice and water, asks Sir David playfully, "may we not, upon good grounds, prefer the probable ice to the possible water, and accommodate the inhabitants of Jupiter with very comfortable quarters, in huts of snow and houses of crystal, warmed by subterranean heat, and lighted with the hydrogen of its waters, and its cinders not wholly deprived of their bitumen?"—Pp. 236, 237. The answer of his opponent would be obvious.

depends on other causes: the condition of its atmosphere, and the internal heat of its mass—as is the case with our earth; and such "may" be the case in Jupiter; and, "if" so, may secure a temperature sufficiently genial to sustain such animal and vegetable life as ours; yet, it is owned, it cannot "increase the feeble light which Jupiter derives from the sun;" but "an enlargement of the pupil of the eye, and increased sensibility of the retina, would make the sun's light as brilliant to Jovians as to us."‡ Besides, a brilliant phosphorescent light "may" be excited in the satellites by the sun's rays. Again, the day of ten hours may be thought insufficient for physical repose; but, it is answered, five hours' repose are sufficient for five of labour. "A difficulty of a more serious kind,§ however, is presented by the great force of gravity on so gigantic a planet as Jupiter;" but Sir David gives us curious calculations to show that a Jovian's weight would be only double that of a man on the earth.

Staggered by such a formidable array of differences, when he was in quest of *resemblances* only,

"Alike, but, oh! how different!"

Sir David rebukes the sceptic for forming so low an opinion of Omnipotent Wisdom, as to assume that "the inhabitants of the planets must be either men, or anything resembling them;—is it," he asks, "necessary that an immortal soul should be hung upon a skeleton of bone, or imprisoned in a cage of cartilage and skin? Must it see with two eyes, and hear with two ears, and touch with ten fingers, and rest on a duality of limbs? May it not rest in a Polyphemus with one eyeball, or in an Argus with a hundred? May it not reign in the giant forms of the Titans, and direct the hundred hands of Briareus?" || "The being of another world may have his home in subterranean cities, warmed by central fires; or in crystal caves, cooled

‡ BREWSTER, p. 61.

|| *Ibid.*, pp. 65, 66.

§ *Ibid.*, p. 62.

by ocean tides; or he may float with the Nereids upon the deep; or mount upon wings as eagles; or rise upon the pinions of the dove, that he may flee away, and be at rest!"*

Let us pause at this point, and see how the question stands on the showing of the respectively imaginative, and matter-of-fact, disputants themselves. Sir David Brewster, being bound to show that analogy forces us to believe Jupiter inhabited, is compelled to admit a series of signal discrepancies in physical condition; expecting his opponent, in turn, to admit such a series of essential alterations, both of inert matter and organisation, as will admit of what?—*totally different* modes of animal and intellectual existence—so different, as to drive a philosopher into the fantastic dreams in which we have just seen him indulging. Not so the essayist, a master of the Inductive Philosophy. He does not presume impiously to limit Omnipotence; but reverently owns His power to create whatever forms and conditions of existence He pleases. When, however, it is asserted that He has, in fact, made beings wholly different from any that we see, "he cannot believe this without further *evidence*."† And on this very subject of the imaginary inhabitants of Jupiter, after reading what his heated and fanciful opponent has advanced, "You are hard," he makes an objector say, "on our neighbours in Jupiter, when you will not allow them to be anything better than 'boneless, watery, pulpy creatures.'" To which he answers, "I had no disposition to be hard on them when I entered upon these speculations. I drew, what appeared to me, probable conclusions from all the facts of the case. *If the laws of attraction, of light, of heat, and the like, be the same there as they are here, which we believe to be certain, the laws of life must also be the same; and, if so, I can draw no other conclusions than those which I have stated.*"‡

Says the essayist, in effect, I know

* BREWSTER, pp. 68, 69. † *Dialogue*, p. 6.

‡ *Ibid.*, p. 23.

that my Maker can invest with the intellect of a Newton, each of

"The gay motes that people the sunbeams;"

but before I believe that he *has* done so, give me reasonable and adequate evidence of so wonderful and sublime a fact; or I must believe in any kind of nonsense that any one would palm upon me.

The planet Jupiter affords a fair sample of the procedure of the essayist and his opponent, with reference to all the other primary planets of the Solar system. From Mercury, in red-hot contiguity to the Sun, to Neptune, which is at thirty times the Earth's distance from it, and from which, as we have seen, it derives only *one-nine-hundredth* part of the light and heat imparted to ourselves by the Sun,—Sir David Brewster will have all inhabited, and the physical condition of each correspondingly altered to admit of it! Central heat, and eyes the pupils of which are sufficiently enlarged, and the retina's sensibility sufficiently increased, to admit of seeing with nine hundred times less light than is requisite for our own organs of sight. "Uranus and Neptune," concludes the triumphant pluralist,"§—nothing daunted by the overwhelming evidences of physical difference of condition, "are *doubtless*," with the Sun, "the abodes of Life and Intelligence: the colossal temples where their Creator is recognised and worshipped; the remotest watch-towers of our system, from which his works may be *better* studied, and his glories *more easily* descried!"

Why, with such elastic principles of analogy as his, should he stop short of peopling the Meteoric Stones with rational inhabitants, whom, and whose doings, as in the case of the Moon, "some magnificent" instrument, yet to be constructed, may discover to us?

This much for the planets: before quitting which, however, we may state that, according to Dr Lardner, about as staunch a pluralist as his admirer Sir David Brewster, a greater rapidity of rotation, and smaller in-

§ *Dialogue*, p. 76.

tervals of light and darkness, are among the characteristics distinguishing the group of major planets from the terrestrial group. He also adds that another "striking distinction" is the comparative lightness of the matter constituting the former. The density of Venus, Mars, and our earth, is nearly equal — about the same as that of ironstone; while the density of the thoroughly-baked planet Mercury is equal to that of gold. "Now it appears, on the contrary," he continues, "that the density of Jupiter very little exceeds that of water; that of Uranus and Neptune is exactly that of water; while Saturn is so light, that it would float in water like a globe of pine wood. The seas and oceans of these planets must consist of a liquid far lighter than water. It is computed that a liquid on Jupiter, which would be analogous to the terrestrial oceans, would be three times lighter than sulphuric ether, the lightest known liquid; and would be such that cork would scarcely float in it!"* Rather queer comrades of ours, must be the Jovian or Saturnian sailors!

Commending these trifling discrepancies to Sir David's attention, while manufacturing his planetary inhabitants in conformity with them, shall we now follow his flight beyond the solar system, and get among the Fixed Stars? Here we are gazing at the Dog-Star! "I allow," says a pensive objector to the essayist,† "that if you disprove the existence of inhabitants in the planets of our system, I shall not feel much real interest in the possible inhabitants of the Sirian system. Neighbourhood has its influence upon our feelings of regard,—even neighbourhood on a scale of millions of miles!"

Among the FIXED STARS our pluralist is quite at home, and evidently in great favour. They twinkle and glitter with delight at his gleeful approach, to invest them with moral and intellectual dignity, and at the same time, perhaps, select "some bright particular" one, to be hereafter favoured and distinguished as the seat of his own per-

sonal existence; whence he is to spend eternity in radiating astronomical emanations throughout infinitude.

"Then, unembodied, doth he trace,
By steps each planet's heavenly way?
A Thing of Eyes, that all survey,
A Thought Unseen, yet seeing all!"‡

He stands in the starry solitude, waving his wand, and lo! he peoples each glistening speck with intellectual existence, with the highest order of intelligence, as in the case of that little star, the sun, which he has quitted.

Now, as to these same FIXED STARS, we can easily guess the steps of Sir David's brief and, to himself, satisfactory argument, which we may call a sublime celestial hop, step, and jump. If the stars be suns, they are inhabited like ours; and if they be suns, each has its planets, like our sun; and if they have planets, they are inhabited like our planets, and if they have satellites like some of ours, they are also inhabited. But the stars *are* suns; and they *have* planets, and at least some of these planets, satellites; therefore, all the fixed stars, with their respective planetary systems, are inhabited—Q. E. D. Here are the very words of the Star-Peopler.—"We are compelled to draw the conclusion that wherever there is a sun, there must be a planetary system, and wherever there is a planetary system, there must be Life and Intelligence."§ This is the way in which, it seems, we worms of the earth feel ourselves at liberty to deal with our Almighty Creator: dogmatically insisting that every scene of existence in which he may have displayed his omnipotence, is but a repetition of that particular one in which we have our allotted place! As if he had but one pattern for universal creation! Only one scheme for peopling and dealing with infinitude! Oh, that *the clay* should think thus of *him that fashioneth it*!|| Forgetting, in an exulting moment of insect blindness and presumption, his

† LORD BYRON.—*Hebrew Melodies*. "The philosopher will scan," says Sir David, at the close of his eloquent Treatise, "with a new sense, the lofty spheres in which he is to study."—P. 259.

§ Pp. 164, 165.

|| Isaiah, xlv. 9.

* *Museum*, &c., i. 35.

† *Dialogue*, 23.

own awful words, *My thoughts are not as your thoughts, neither are your ways my ways. For as the heavens are higher than the earth, so are my ways higher than your ways, and my thoughts than your thoughts!* *

We are now, however, about to people the fixed stars. The only proof that they are the centres of planetary systems, resides in the assumption that these stars are like the sun; and as resembling him in their nature and qualities, so having the same offices and appendages; being independent sources of light, and thence probably of heat; therefore having attendant planets, to which they may impart such light and heat; and these planets' inhabitants living under and enjoying those benign influences. Everything here depends on this proposition, that the stars are like the sun; and it becomes essential to examine what evidence we have of the exactness of this likeness.† In the Preface to his Second Edition, the essayist, whose scientific knowledge few will venture to impugn, boldly asserts that "man's knowledge of the physical properties of the luminaries which he discerns in the skies, is, even now, *almost nothing*;" and "such being the state of our knowledge, as bearing on the doctrine of the plurality of worlds, the time appeared to be not inopportune for a calm discussion of the question,—upon which, accordingly," he adds, "I have ventured in the following pages." In the same Preface he has ably condensed into a single paragraph his views on the nature and extent of our present knowledge on the subject of the fixed stars.‡

"In more recent times, many of the astronomical discoveries which have been made, tend to render the conjecture of the plurality of inhabited worlds improbable on physical grounds. * * * Again: It was found that many of the Fixed Stars are physically double, and therefore cannot be the centres of simple systems of planets as the Sun is. And that such double stars have planets revol-

ing or moving near them at all, is a supposition arbitrary, quite unsupported by any analogy, and never yet shown to be physically possible. Again, there are variable stars, which are evidently in very important respects unlike our Sun. Moreover, these cases of double stars, which were at first supposed to be rare exceptions to a general rule, are now, by recent examination, found to be very numerous,—not less numerous than one-third of the whole number of stars. And the variable stars also are very numerous. So that it appears to be not improbable that a single permanent star like the Sun, even leaving its planets out of consideration, is a rare exception, instead of being the rule. And with all these negative indications, there is found in the heavens no vestige of anything like a planet revolving round a fixed star!"

In the opening of the chapter devoted to this subject (ch. viii.), he admits "the special evidence," as to the probability of these stars containing, in themselves, or in accompanying planets, inhabitants of any kind, "is, indeed, slight, *either way*."

As to clustered and double stars, they appear to give us, he says, but little promise of inhabitants. In what degree of condensation the matter of these binary systems is, compared with that of our solar system, we have no means whatever of knowing: but even granting that each individual of the pair were a sun like ours, in the nature of its material, and its state of condensation, is it probable that it resembles our sun also in having planets revolving about it? A system of planets revolving about, or among, a pair of suns, which are at the same time revolving about one another, is so complex a scheme (apparently), so impossible to arrange in a stable manner, that the assumption of the existence of such schemes, without a vestige of evidence, can hardly require refutation. No doubt, if we were really required to provide such a binary system of suns, with attendant planets, this would be best done by putting the planets so near to one

* Isaiah, lv. 8, 9.

† *Essay*, p. 244.

‡ Pp. vii. viii.

sun that they should not be sensibly affected by the other; and this is accordingly what has been proposed. For, as has been well said by Sir John Herschell, of the supposed planets, in making this proposal, "unless closely nestled under the protecting wing of their immediate superior, the sweep of the other sun in his perihelion passage round their own, might carry them off, or whirl them into orbits utterly inconsistent with the existence of their inhabitants." "To assume the existence of the inhabitants," says our essayist, "in spite of such dangers, and to provide against those dangers by placing the planets so close to one Sun as to be out of the reach of the other, though the whole distance of the two may not, and as we know in some cases does not, exceed the dimensions of our solar system, is showing them all the favour which is possible. But in making this provision, it is overlooked that it may not be possible to keep them in permanent orbits so near to the selected centre. Their Sun may be a vast sphere of luminous vapour; and the planets plunged into this atmosphere may, instead of describing regular orbits, plough their way in spiral paths through the nebulous abyss of its central nucleus.*"

In dealing with the single stars, which are, like the sun, self-luminous, can they be proved, like him, to be definite, dense masses? *his* density being about that of water. Or are they, or many of them, luminous masses in a far more diffused state, visually contracted to points through their immense distance? Some of those which we have the best means of examining are one-third, or even less in mass, than he: and if Sirius, for instance, be in this diffused condition, though that would not of itself prevent his having planets, it would make him so unlike our Sun, as much to break the force of the presumption that he must have planets as the Sun has. Again: As far back as our knowledge of our Sun extends, his has been a permanent condition of

brightness: yet many of the fixed stars not only undergo changes, but periodical, and possibly progressive changes:—whence it may be inferred, perhaps, that they are not, generally, in the same permanent condition as our Sun. As to the evidence of their revolution on their axes, this has been inferred from their having periodical recurrences of fainter and brighter lustre; as if revolving orbs with one side darkened by spots. Of these, five only can be at present spoken of by astronomers† with precision.‡ Nothing is more probable than that these periodical changes indicate the revolution of these stellar masses on their axes—a universal law, apparently, of all the large compact masses of the universe, but by no means inferring their being, or having accompanying planets, inhabited. The Sun's rotation is not shown intelligibly connected with its having near it the inhabited Earth.

In the mean time, in so far as these stars are periodical, they are proved to be, not like, but *unlike* our Sun. The only real point of resemblance, then, is that of being self-luminous; in the highest degree ambiguous and inconclusive, and furnishing no argument entitled to be deemed one from analogy. Humboldt deems the force of analogy to tend even in the *opposite* direction. "After all," he asks,§ "is the assumption of satellites [attendant planets] to the fixed stars so absolutely necessary? If we were to begin from the outer planets, Jupiter, &c., analogy might seem to require that all planets have satellites:—yet this is not so with Mars, Venus, Mercury;" to which may now be added the thirty [one] Planetoids—making a

† See them specified, p. 251.

‡ (1.) *Omicron*, in the constellation *Cetus*, revolves in 331 days. (2.) *Algol*, in the constellation *Perseus*, revolves in 2 days, 21 hours. (3.) *Delta*, in the constellation *Cepheus*, revolves in 5 days, 9 hours. (4.) *Beta*, in the *Lyre*, revolves in 6 days, 10 hours—possibly, from one revolution having been taken for two, in 12 days, 21 hours. (5.) *Eta*, *Aquila*, 7 days, 4 hours. There are about thirty more stars supposed to be subject to such changes.

§ *Cosmos*, iii. 373.

* *Essay*, pp. 243, 244.

much greater number of bodies that have not, than that have, satellites. The assumption, then, that the fixed stars are of exactly the same nature as the Sun, was originally a bold guess; but there has not since been a vestige of any confirmatory fact:—no planet, nor anything fairly indicating the existence of one revolving round a fixed star, has ever hitherto been discerned;—and the subsequent discovery of nebulae; binary systems; clusters of stars; periodical stars; of varied and accelerating periods of such stars,—all seem to point the other way: leaving, though possibly facts small in amount, the original assumption a mere guess, unsupported by all that three centuries of most diligent, and in other respects successful research, have been able to bring to light. All the knowledge of times succeeding Copernicus, Galileo, and Kepler,—who might well believe the stars to be in every sense suns;—among other things, the disclosure of the history of our own planet, as one in which such grand changes have been constantly going on; the certainty that in by far the greatest part of the duration of its existence, it has been tenanted by creatures entirely different from those which give an interest, and thence a persuasiveness, to the belief of inhabitants in worlds appended to each star; the impossibility which appears, on the gravest consideration, of transferring to other worlds such interests as belong to our race in this world;—all these considerations, it would seem, should have prevented that old and arbitrary conjecture from growing up, among a generation *professing philosophical caution and scientific discipline*, into a settled belief. Finally, it will be time enough to speculate about the inhabitants of the planets which belong to such systems, as soon as we shall have ascertained that there are such planets,—or that there is one such.*

In the Dialogue, written after the first edition of the "Essay" had appeared, the essayist greatly strength-

* Chap. viii., *passim*.

ens the position for which he had contended in it, by an important passage containing the results of the eminent astronomer *M. Struve's* recent examination of double stars, and the result of his elaborate and comprehensive comparison of the whole body of facts in stellar astronomy. Among the brighter stars, *M. Struve* arrives at the conclusion, that every FOURTH such star is physically double; and that a completed knowledge of double stars may prove every THIRD bright star to be physically double! And in the case of stars of inferior magnitude, that the number of *insulated* stars, though indeed greater than that of such compound systems, is nevertheless only three times, perhaps only twice as great. Thus the loose evidence of resemblance between our Sun and the fixed stars becomes feebler the more it is examined; and the assumption of stellar *planetary* systems appears, when closely scrutinised, to dwindle away to nothing.†

Now, to so much of the foregoing grave and formidably arrayed facts and speculations, concerning the Fixed Stars, as are contained in the Essay, from which we have faithfully and carefully extracted the substance, in order that our readers may be able, in some degree, to judge for themselves, Sir David Brewster answers, in effect, and generally in words, thus.

The greatest and grandest truth in astronomy, is the motion of the solar system; advancing with all the planets and satellites in the heavens, at the rate of fifty-seven miles a second, round some distant invisible body, in an orbit of such inconceivable dimensions, that millions of years may be required for a single orbit. When we consider that this centre must [?] be a sun with attendant planets like our own, revolving in like manner round our sun, [?] or round their common centre of gravity, the mind rejects, almost with indignation, the ignoble sentiment that Man is the only being performing this immeasurable jour-

† Dialogue, pp. 20-23.

ney; and that Jupiter, Saturn, Uranus, and Neptune, with their bright array of regal train-bearers, are but as colossal blocks of lifeless clay, encumbering the Earth as a drag, and mocking the creative majesty of Heaven. From the birth of man to the *extinction of his race* [1] the system to which he belongs will have described but an infinitesimal arc in that grand cosmical orbit in which it is destined to move. This affords a new argument for the plurality of worlds. Since every fixed star must have planets, the fact of our system revolving round a similar system of planets, furnishes a new argument from analogy; for as there is at least one inhabited planet in the one system, there must for the same reason be one in the other, and consequently as many as there are systems in the Universe.* Thus our system is not absolutely fixed in space, but is connected with the other systems in the Universe.

The fixed stars, continues Sir David, are suns of other systems, "whose planets are invisible from their distance, as are ours from the nearest fixed star. Every *single* star shining by its own native light is the centre of a planetary system like our own—the lamp that lights, the stove that heats, and the power that guides in their orbits, inhabited worlds like our own. Many are *double*, with a system of planets round each, or the centre of gravity of both. No one can believe that two suns would be placed in the heavens, for no other purpose than to revolve round their common centre of gravity. It is "highly probable," that *our Sun is one of a binary System*, and has at present an unseen partner; and we are "entitled to conclude" that all the other binary systems have at least an inhabited planet: wherever there is a self-luminous fixed or movable Sun, there must be a planetary system; and wherever there is a planetary system, there must be life and intelligence.†

Apart from the assertion of his cardinal principle, with which we are

familiar from his peremptory assertions, namely, that since our Sun has an inhabited planet, all others must, and also that all planets must be inhabited;—the argumentative value of these two chapters seems to lie in this, that they annihilate one of the essayist's leading points of *unlikeness* between our Sun and other Fixed Stars, inasmuch as it, together with so many of them, is one of a binary system: wherefore what is true of it, is true of them, *et vice versa*. He bases this proposition, viz., that our Sun is one of a binary system, on "high probability," from "the motion of our own system round a distant centre."‡ The great truth of this motion, he accuses the essayist of having "completely misrepresented, foreseeing its influence on the mind as an argument for more worlds than one."§ What the essayist had said on the subject, was this:|| he spoke of "the *attempt* to show that the Sun, carrying with it the whole solar system, is in motion; and the further *attempt* to show the direction of that motion;—and again, the *hypothesis* that the sun itself revolves round some distant object in space." These "minute inquiries and bold conjectures," he says, "cannot throw any light on the question, whether any part besides the earth *be inhabited*: any more than the investigation of the movements of the ocean and their laws can prove or disprove the existence of *marine plants and animals*. They do not, on that account, cease to be important and interesting objects of speculation, but they do not belong to our subject." As to the Sun's motion, however, we are bound to say, that the Astronomer-Royal has recently declared, "that every astronomer who has examined the matter carefully, has come to a conclusion very nearly the same as that come to by Sir William Herschell,—that the whole solar system is moving bodily towards a point in the constellation Hercules; but it is a thing in which the computation is not very

* *More Worlds than One*, Chap. vi., *passim*.

† *Ibid.*, Chap. viii., *passim*.

‡ *Ibid.*, p. 164.

§ *Ibid.*, p. 119.

|| *Essay*, p. 257.

accurate, and it will probably remain inaccurate for many years to come.* Before quitting this part of the subject, we may state that the essayist, in his second Preface,† points out the insecure character of astronomical calculations as to the amount of absolute light ascribed to some of the fixed stars. It has been estimated that the illuminating power of *Alpha Centauri*, the nearest to our system, is nearly double that of the Sun, placed at that distance, which is two hundred thousand times as far off as is the Sun; but Sir John Herschell will not concur in more of the calculation than attributes to the star the emission of *more* light than our Sun. Surely the critical and precarious character of such calculations, should not be lost sight of by candid and competent inquirers; but incline them to scan somewhat closely any pretensions tinged by astronomic dogmatism.

One immense step more, however, but our last, brings us to the "outskirts of creation," as the essayist calls it,—the *Nebulæ*; and here we find him once more confronted by his indefatigable and implacable opponent. We must therefore take our biggest and best mental telescope to behold these two Specks intellectual, so far off in infinitude, wrangling about a faint cloud vastly further off than themselves.—Do you see how angry one of them looks, and how provokingly stolid the other? One of them is vehemently gesticulating and protesting that the other *will* not see, what that other, gazing intently, declares he really cannot. 'Tis all about the nature of that same cloud, or Nebula; and perhaps we are catching, in their dispute, a chord or two of the music of the spheres! The essayist is required, by his brother speck, to believe that the faintly-luminous patch at which they are gazing—a thousandth part of the visible breadth of our own Sun—contains in it more life than exists in as many such systems as the unassisted eye can see stars in the heavens on

the clearest winter night! A view of the greatness of creation so stupendous, this, that the astounded speck, the essayist, asks for a moment's breathing time to consider the matter. "We are entitled to draw the conclusion," says the other, with lively emotion, "that these *Nebulæ* are clusters of stars, at such an immense distance from our own system, that each star of which they are composed is the sun or centre of a system of planets; and that these planets are inhabited: are, like our Earth, the seat of vegetable, animal, and intellectual life:"‡ that all the *Nebulæ* are resolvable into stars; and appear as *Nebulæ* only because they are more distant than the region in which they can appear as stars.§

"Each Nebula," says Sir David, "corresponds with our hill of microscopic infusorial animals: each System, with a cubic inch of its materials; and each planet with a cubic line. If we have seen with our own eyes, in the microscope, the individual animal—only the two-thousandth part of an inch in size, and if we have seen the hill which is an accumulation of them, need we wonder at *Nebulæ* being stars, stars being suns, and at *planets being inhabited!*"||

The conclusion, however, at which the essayist arrives, after an elaborate examination of evidence, and especially of the latest discoveries in this dim and distant region, by Sir John Herschell and the Earl of Rosse, is—that *Nebulæ* are vast masses of incoherent or gaseous matter, of immense tenuity, diffused in forms more or less irregular, but all of them destitute of any regular system of solid moving bodies. "So far, then," he concludes, "as these *Nebulæ* are concerned, the improbability of *their* being inhabited appears to amount to the highest point that can be conceived. We may, by the indulgence of fancy, people the summer clouds, or the beams of the aurora borealis, with living beings of the same kind of substance as those bright appear-

* *Lect. on Astron.*, 2d edit. (1849), sect. v. 174.

† *Pp.* ix. x.

‡ *More Worlds than One*, p. 176.

§ *Essay*, p. 211.

|| *P.* 169.

ances themselves; and in doing so, we are not making any bolder assertion than when we stock the Nebulæ with inhabitants, and call them, in that sense, distant worlds.* The essayist contends that the argument for the vastness of the scheme of the Universe, suggested by the resolution of the Nebulæ, is found to be untenable:—inasmuch as the greatest astronomers now agree in believing Nebulæ to have *distances of the same order* as Fixed Stars. Their filmy appearance is a true indication of a highly attenuated substance: so attenuated as to destroy all probability of their being inhabited worlds. With this opinion as to the tenuity of Nebulæ, agrees the absence of all *observed* motion among their parts; while the extraordinary spiral arrangement of many of them, proves that nevertheless many of them really *have* motion, and suggests modes of calculating their tenuity, and showing how extreme it is. "It is probable," said Lord Rosse, in a paper which we ourselves heard him read not long ago, from the chair of the Royal Society, of which he is one of the brightest ornaments, "that in the Nebular systems, motion exists. If we see a system with a distinct spiral arrangement, all analogy leads us to conclude that there has been motion; and that if there has been motion, that motion still continues." "Among the Nebulæ," he says, "there are vast numbers, much too faint to be sketched or measured with any prospect of advantage: the most powerful instruments we possess showing in them nothing of an organised structure, but merely a confused mass of nebulousity, of varying brightness."† The essayist makes powerful use, moreover of Sir John Herschell's celebrated observation of the Magellanic Clouds,‡ lying near the South Pole;

exhibiting the co-existence, in a limited compass, and in indiscriminate position, of stars, clusters of stars, nebulæ, regular and irregular, and nebular streaks and patches, things different not merely to us, but in themselves: nebulæ, side by side with stars and clusters of stars; nebulous matter resolvable, close to nebulous matter irresolvable;—the last and widest step by which the dimensions of the Universe have been expanded, in the notions of eager speculators, being checked by a completer knowledge, and a sager spirit of speculation.‡ In discussing such matters as these, he finely observes, "It is difficult to make men feel that so much ignorance can lie close to so much knowledge; to make them believe that they have been allowed to discover so much, and yet are not allowed to discover more."¶

In alluding to the Nebulæ, as subjects of our most powerful telescopic observation, the essayist had presumed to speak in a tone of slightly sarcastic raillery concerning the "*shining dots*"—"the *lumps of light*" which are rendered apparent amidst them: asking, what are these lumps? (1.) How large? (2.) At what distances? (3.) Of what structure? (4.) Of what use?—adding, he must be a bold man who undertakes to answer the question, that each is a Sun, with attendant systems of planets. Sir David, exceedingly irate, answers: "We accept the challenge, and appeal to our readers—(1.) The size of the dot, or lump, is large enough to be a Sun. (2.) This cannot be answered, for want of 'knowing the apparent distance between the centres of the dots.' (3.) Like our Sun, 'It will consist of a luminous envelope, enclosing a dark nucleus.' (4.) Of no conceivable use, but to give light to planets, or to the solid *nuclei* of which they consist!" In his turn, he asks the essayist—what is the size, distance, structure, and use of the dots, upon his hypothesis? The essayist, he observes, is silent;¶ but in his Essay he had said, distinctly enough,

* Essay, 235, 236.

† Dialogue, 18.

‡ By the *Magellanic Clouds* is meant, a certain pair of remarkable bright spaces of the skies, filled with a cloudy light, which lie near the Southern Pole; and which, having been unavoidably noticed by the first Antarctic voyagers, are called after the name of "*Magellan*."

§ Essay, p. 214.

¶ Ibid., p. 216.

¶ *More Worlds than One*, p. 215.

"Let us not wrangle about words. By all means let these dots be stars, if we know about what we are speaking: if a star mean merely a luminous dot in the sky. But that these stars shall resemble, in their nature, Stars of the First Magnitude, and that such stars shall resemble Our Sun, are surely very bold structures of assumption, to build on such a basis. Some nebulae are resolvable into distinct points; but what would it amount to? That the substance of all nebulae is not continuous; separate, and separable into distinct luminous elements:—nebulae are, it would then seem, as it were of a curdled or granulated texture; they have run into *lumps* of light, or been formed originally of such lumps." And then follow some ingenious and refined speculations, into which we have not space to enter. We may, indeed, be well content with what we have done; having already travelled from a tolerable depth in the crust of our own little planet, past planet after planet, star after star, till we reached the nebulous "outskirts of creation;" accompanied by two Mentors of Infinitude—whispering into our ear—one, that life, animal, intellectual, moral, was swarming around us at every step; the other, that intellectual and moral life ceased with our own Earth, as far as we were able to detect its existence; and giving us solemn and mysterious reasons why it should be so.

Our essayist, however, is not exhausted by the efforts he has made in his destructive career. If he be a proud "setter down" of cosmological systems, he determines, in turn, to be a "putter up:" and so presents us with his own "Theory of the Solar System;" and an explanation of the mode in which he conceives it possible that all appearances in the Universe beyond, may be reconciled with it. "It may serve," he says, "to confirm his argument, if he give a description of the system, which shall continue and connect his views of the constitution and peculiarities as to physical circumstances, of each of the planets. It will help us in our speculation, if we can regard them as not only a

collection, but a scheme;—if we can give not an Enunciation only, but a Theory. Now such a SCHEME, such a THEORY, appears to offer itself to us." * The scope of this scheme, or theory, is, as we some time ago saw, to make our earth, in point of astronomical fact and reality, the largest Planetary Body in the solar system; its domestic hearth; the only part of the frame, revolving round the Sun, which has become a "WORLD." We must, however, be very brief, earnestly commending this part of his work to the attention of the philosophical reader.

The planets exterior to Mars, especially Jupiter and Saturn, appear spheres of water, or aqueous vapour. The Earth has a considerable atmosphere of air and of vapour; while on Venus or Mercury, so close to the sun, we see nothing of a gaseous or aqueous atmosphere; they and Mars differing little, in density, from the earth.

"Now," he asks, "does not this look as if the water and the vapour belonging to the solar system were driven off into the outer regions of its vast circuit; while the solid masses, nearest to the focus of heat, are all, approximately, of the same nature? So that the Earth is situated nearly in that region of the system where the existence of matter, in both a solid, a fluid, and a gaseous condition, is possible. Outside her orbit—or at least that of the planetoids—there is apparently no solid matter, or, if any, a vast preponderance of watery and vaporous matter. Inside of that orbit, we see no traces of water, vapour, or gas, but solid matter. The Earth alone is placed at the border where the conditions of life are combined: ground to stand upon; air to breathe; water to nourish vegetables, and thus animals; solid matter to supply the materials for their more solid parts: and with this, a due supply of light and heat,—a due energy of the force of weight. All these are conditions requisite for life; and that they meet elsewhere than in the neighbourhood of the Earth's orbit, we see strong reason to disbelieve. The Earth, then,

* *Essay*, p. 298.

seems to be the abode of life: not because *all* the globes, revolving round the Sun, may be assumed to be the abodes of life, but because the Earth is *fitted* to be so, by a complex combination of properties and relations, not at all applying to the others. That the *Earth* is inhabited, is not a reason for believing that the other planets are so, but for believing that they are not. * * * Can we see any physical reason for the probable fact, that all the water and vapour of this system is gathered in its outward parts?"

NOW THE EARTH'S ORBIT, according to the essayist's theory, IS THE TEMPERATE ZONE OF THE SOLAR SYSTEM; where only the play of hot and cold, moist and dry, is possible. Water and gases, clouds and vapours, form, mainly, the planets in the outer part of the solar system; while masses, such as result from the fusion of the most solid materials, lie nearer the Sun, and are found principally within the orbit of Jupiter. After a further exposition of his "theory," the essayist observes that it agrees with the nebular hypothesis, so far as it applies to the *Solar System*; exactly, and very sternly, repudiating that hypothesis as it applies to the universe in general.* "If we allow ourselves," says he, "to speculate *at all*, on physical grounds, respecting the origin of the Earth, the hypothesis, that it has passed through a fluid and a gaseous condition, does not appear more extravagant than any other cosmogonical hypothesis: not even if we suppose that the other bodies of the solar system have shared in the like changes. *But*, that all the stars and the nebulae have gone, or are going through, a series of changes such as those by which the solar system has been formed,—the nebular hypothesis, as it applies to the *universe* in general,—

is precisely the doctrine which I here reject, giving my reasons."†

The whole of the chapter devoted to "the Theory of the Solar System," is distinguished by remarkable ingenuity and originality. It is, however, that entitled *the Argument from Design* which, independently of all connection with the speculations of the author as already laid before our readers, is worthiest of consideration by all interested in natural theology. It touches many topics which must have occupied the profoundest thoughts of mankind, and touches them with the utmost caution and delicacy. In the 34th section of that Chapter (xi), will be found a passage of singular boldness and imaginative eloquence; but liable, in our opinion, to serious misconception, and susceptible of misrepresentation—by those, at least, who are either unable or indisposed to weigh the entire chapter, and ascertain its real value and tendency. Certain expressions have startled ourselves, we own, not a little, when reflecting that they relate to the possible mode of action of omniscient omnipotence; and we shall be gratified by seeing them vindicated, or explained, in the next edition of his Essay.‡

Each of our speculators closes his book with a chapter devoted to "The Future." The ideas of Sir David concerning the duration of the human race upon the earth, which Inspiration warns us is so awfully uncertain, and will be cut short suddenly—in a moment—in *the twinkling of an eye*, seem to be curiously definite; since we have seen him stating, in his sixth chapter, that "from the birth of man to the extinction of his race, the Solar System to which he belongs will have described but an infinitesimal arc in that grand cosmical orbit in which it is destined to move." Without pausing to ask who told him this, let us give

* *More Worlds than One*, p. 315, and note.

† In his Third Edition, written since these papers appeared, Dr Whewell alludes to the attempt of his assailant to fasten on him what is intended to be an odious imputation—that of holding "the nebular hypothesis:—" "forgetting," he continues, "that the nebular hypothesis is a hypothesis *about the*

nebulae. That the nebulae are *not* in a state of progress towards becoming systems of worlds, is a doctrine prominently asserted and argued for in the Essay;—that they *are*, is commonly held in conjunction with the assertion of the "plurality of worlds."

‡ See note at the end of the paper.

our readers "THE FUTURE OF THE UNIVERSE," according to Sir David Brewster. He says that the scientific truths on which depends the plurality of worlds, are intimately associated with the future destiny of man: who turns to the future of the sidereal systems, as the hallowed spots in which is to be spent his immortal existence. Scripture has not spoken articulately of the future locality of the blest; but Reason has combined the scattered utterances of Inspiration, and with an almost oracular voice declared that the Maker of the worlds will place, *in these*, the beings of his choice! In what region, reason does not determine; but it is *impossible* for man, with the light of Revelation as his guide, to doubt for a moment that on the celestial spheres his future is to be spent, in lofty inquiries; social intercourse; the renewal of domestic ties; and in the service of his Almighty benefactor. The Christian's future, not defined in his creed, enwrapped in apocalyptic mysteries, evades his grasp: it is only Astronomy that opens the mysterious expanse of the Universe to his eye, and creates an intelligible paradise in the world to come. Wherefore, says Sir David, we must impregnate the popular mind with the truths of natural science; teaching them in every school, and recommending, if not illustrating, them from every pulpit: fixing in the minds and associating in the affections, alike of age and youth, the great truths, in the planetary and sidereal universe, on which the doctrine of More Worlds than One must respectively rest—the philosopher scanning with a new sense the spheres in which he is to study; and the Christian the temples in which he is to worship.—Such, in his own words, is Sir David Brewster's final and authoritative exposition of the CREED of the philosopher, and the HOPE of the Christian! Of such a nature, it appears, are to be the *new heavens and the new earth wherein dwelleth righteousness*; and such, henceforth, as he has vouchsafed to indicate, becomes the duty of the Christian teacher in the Family, in the School, in the

Pulpit! So absolutely and irrefragably, it seems, are demonstrated the stupendous facts of astronomical science, on which this Creed and this Faith depend; so unerring are our telescopes and other instruments; that he who does not receive this "Creed" is no philosopher, nor he who rejects the "Hope," a Christian! But, in the mean time, surely it occurs to any one to reflect how inconceivably embarrassing to *such* a philosopher, and to *such* a Christian, is the possibility that many, or a few years hence, such immense improvements may be made in telescopes, or such other modes devised of acquiring a knowledge of the celestial structures, as to demonstrate to the sense, as well as reason, of us impatient and presumptuous tenants of the earth, that the planets are not inhabited! that the fixed stars are not suns, and have not a planet a-piece—no, not even a solitary planet among them! Thus rendering our astounded and dismayed philosopher homeless and "*creedless*," and the Christian helpless and "*hopeless*:"—the former one of those who *professing themselves to be wise become fools*;* the latter, *likened unto a foolish man which built his house upon the sand*.†

The *Future* of the essayist is of a different kind, and adumbrated with becoming humility and diffidence. "I did not," he says, "venture farther than to intimate, that when we are taught, that *as we have borne the image of the Earthly, we shall also bear the image of the Heavenly*, we may find, in even natural science, reasons for opening our minds to the reception of the cheering and elevating announcement."‡

Whatever may be the future of our earth, and whatever be the scenes destined to be enacted upon it with reference to its present human occupants, and independently of the revelations of Scripture, the possibilities reverently put forward by the essayist, he declares so vague and doubtful, as far as any scientific analogies lead, that it would be most unwise to at-

* Romans, i. 22.

† Matthew, vii. 26.

‡ *Dialogue*, p. 74.

tempt to claim for them any value, as points in which Science supplies support to Religion. Those persons who most deeply feel the value of religion, and are most strongly convinced of its truths, will be the most willing to declare that religious belief is, and ought to be, independent of any such support, and must be, and may be, firmly established on its own proper basis. We find no encouragement, then, he says, for any attempt to obtain from Science, by the light of the analogy of the past, any definite view of a future condition of the Creation. But he concludes his labours by saying that they will not have been without profit, if they have left upon our minds these convictions:—

“That if the analogy of science prove anything, it proves that the Creator of man, can make a creature as far superior to man, as man, when most intellectual, moral, religious, and spiritual,” is superior to the brutes.

And again, “that man’s intellect is of a divine, and therefore of an immortal nature.

“Those persons who can, on any basis of belief, combine these two convictions, so as to feel that they have a personal interest in both of them—those who have such grounds as religion, happily appealed to, can furnish, for hoping that their imperishable element may, hereafter, be clothed with a new and more glorious apparel by the hand of its Almighty maker,—may be well content to acknowledge that science and philosophy could not give them this combined conviction in any manner in which it could minister that consolation, and that trust in the Divine power and goodness, which human nature in its present condition requires.”

In this impressive and dignified tone, and these deeply-considered expressions, the essayist concludes his *Inquiries and Speculations*, in the true spirit of a Christian Philosopher.

We have now placed before our readers the substance of the arguments for and against a plurality of worlds, so far as developed in the reasonings of Dr Whewell, and the as-

sertions of Sir David Brewster. The essay of the former is a work so replete with subtle thought, bold speculation, and knowledge of almost every kind, used with extraordinary force and dexterity, as to challenge the patient and watchful attention of the most thoughtful reader; and that, whether he be or be not versed in astronomical speculations. Great as are the powers and resources of the author, however, we detect no trace of dogmatism or arrogance, but, on the contrary, a true spirit of fearless, but patient and candid, inquiry. It is a mighty problem of which he proposes a solution, and he does no more than propose it: in his Preface declaring that, to himself at least, his arguments “appear to be of no small philosophical force, though he is quite ready to weigh carefully and candidly any answer which may be offered to them.”

We feel grateful to him for the storehouse of authentic facts, and the novel combination of unsuspected inferences from them, with which he has presented us; and are not aware that he has supplied, in a single instance, just reason to regret confiding in his correctness or candour. In travelling with him through his vast and chequered course, we feel that we have accompanied not only the philosopher and the divine, but the gentleman: one who, while manifestly knowing what is due to himself, as manifestly respects his intelligent reader. In several of his astronomical assumptions and inferences we may be unable to concur, particularly in respect of the nebulous stars. Nor do we desire to be considered as any more committing ourselves to his bold and ingenious Theory of the Solar System, than we should think of denying his right to propose his Theory, or have it deliberately considered. Where all is speculation, why should not *he* speculate, if he do so consistently with established facts?

We may, however, well falter at expressing a decisive *Yes* or *No* to the great question proposed by him for discussion. Yet we acknowledge that

he has sensibly shaken our opinion as to the validity of the reasons usually assigned for believing in a plurality of worlds. He remorselessly ties us down to EVIDENCE, as he ought to do; and all the more rigorously, because the affirmative conclusion, at which many heedless persons are disposed to jump, is one which, if well founded, occasions religious difficulties of a grave character among the profoundest and perhaps even devoutest thinkers. To suppose that Omnipotence may not have peopled already, or contemplate a future peopling of the starry spheres with intelligent beings, of as different a kind and order as it is possible for our limited faculties to conceive, yet in some way involved in physical conditions, altogether inexplicable to us, would be the acme of impious presumption. When we look at Sirius, in his solitary splendour in the midnight sky, pouring forth *possibly* fifty times the light and heat of our sun, upon *possibly* a prodigiously greater planetary system than our own, it is natural to conjecture whether, among many other *possibilities*, it may be the seat of intelligence, perhaps of a transcendent character. Here the imagination may disport itself as it pleases: yet we shall feel ourselves compelled—those who can *think* about the matter—to own that our imaginations are, as it were, “caged, cribbed, confined,” by the objects and associations to which we are at present restricted; and as the late eminent Prussian astronomer, Bessel, observed, those who imagine inhabitants in the moon and planets, “supposed them, in spite of all their protestations, as like to *men*, as one egg to another.” But when we proceed further, and insist on likening these supposed inhabitants to ourselves, intellectually and morally, then it is that both philosophy and religion concur in rebuking us, and enjoining a reverent diffidence. What do you really, what do you suppose, that you mean, would say the essayist, when you say it is probable that the heavenly bodies are peopled by beings *like ourselves*? Have you weighed the ex-

pression? Have you ascertained the conditions which it involves and presupposes?

We have probably read as much on these subjects as many of our readers, and that with deep interest and due attention; but we never met with so cogent a demonstration as is contained in this Essay, of the theological difficulties besetting the popular doctrine of a plurality of worlds. Had God vouchsafed to tell us that it was so, there would have been an end of the matter, and with it all difficulty would have disappeared, to one whose whole life, as the Christian's ought to be, is one continued act of faith; but God has thought fit to preserve an awful silence concerning his dealings with other scenes of physical existence: while he has as distinctly revealed that of spiritual beings whose functions are vitally connected with man, as he exists upon the earth, the subject of a sublime economy, which we are assured by Inspiration, that *the angels desire to look into*. The Christian implicitly and joyfully believes that there is a HEAVEN, where the presence of the adorable Deity constitutes happiness, to the most exalted of His ministers and servants, perfect and ineffable: happiness in which He has solemnly assured us that we may hereafter participate: *for since the beginning of the world, men have not heard, nor perceived by the ear, neither hath the eye seen, O God, beside Thee, what He hath prepared for him that waiteth for Him*.^{*} This, our Maker has told us; he has not told us the other, nor anything about it: no, not when He visited the earth, unless we can dimly see such a significance in the words, “In my Father's house—*oikia*—are many *mansions*—*monai*—: if it were not so, I would have told you. I go to prepare a place—*τόπον*—for you.” The word *μονή* is used twice in the New Testament, and in the same chapter: † in the verse already quoted, and in the 23d—“If a man love me, he will keep my words: and my

^{*} Isaiah, xlv. 4. This verse is quoted by St Paul in 1 Cor. ii. 9.

† John, xiv. 2, 23.

Father will love him, and we will come unto him, and make our abode, *μονὴν*, with him." Here are the three words in the same verse, *οἰκία*, *μονή*, *τόπος*. In my Father's house there are *μοναὶ* πολλαί, many places of *abode*. Heaven is the *οἰκία*, our common place, and it has many subdivisions, room enough for angels, as well as for the spirits of just men made perfect. It is possibly an allusion to the temple, God's earthly house, which had many chambers in it. But who shall require us to believe that this *μονή* was a star, or planet? It may be so, it may not; there can be no sin in a devout mind conjecturing on the subject; but the essayist does not meddle with these solemn topics: confining himself to the physical reasons for conjecturing, with more or less probability, that the stars are habitations for human beings. To him who reverently receives the cardinal doctrine of Christianity, the Divinity of our Saviour, his silence on the subject before us, speaks with awful eloquence to the soul. But we forbear to prosecute a subject so grand, so solemnising, so sublimely suggestive. Giving our full meed of applause to the author of the Essay before us, for the sincere and pious discretion which he uniformly exhibits in dealing with such subjects, we take our leave of him with an admirable passage from his Dialogue:—

"U. But your arguments are merely negative. You prove only that we do not know the planets to be inhabited.

"Z. If, when I have proved that point, men were to cease to talk as if they knew that the planets *are* inhabited, I should have produced a great effect.

"U. Your basis is too narrow for so vast a superstructure, as that all the rest of the universe, besides the earth, is uninhabited.

"Z. Perhaps; for my philosophical basis is only the earth—the only known habitation. But on this same narrow basis, the earth, you build up a superstructure that other bodies *are* inhabited. What I do is, to show

that each part of your structure is void of tenacity, and cannot stand.

"It is probable that when we have reduced to their real value all the presumptions drawn from physical reasoning, for the opinion of planets and stars being either inhabited, or uninhabited, the force of these will be perceived to be so small, that *the belief of all thoughtful persons on this subject will be determined by moral, metaphysical, and theological consideration.*" *

In these few words may be found the essence of the entire Essay.

"More Worlds than One," will not, we are constrained to say, in our opinion, add to the well-earned reputation of Sir David Brewster. It is a hasty and slight performance, entirely of a popular character, and disfigured throughout, not only by an overweening confidence and peremptoriness of assertion, but by tinges of personality, and outbursts of heat, which are indeed strange disturbing forces in a philosophical discussion. Dr Whewell's Essay is a work requiring, in a worthy answer, great consideration; and we do not think that "More Worlds than One," evidences a tithe of such consideration. Its author does not show a proper respect for his opponent; nor has he taken a proper measure of his formidable proportions, as a logical and scientific disputant!—one who should be answered in a cold and exact spirit, or it were much better to leave him alone. Sir David must forgive us if we quote a sentence or two from devout old John Wesley, a man who had several points of greatness in him:—

"Be not so *positive*, especially with regard to things which are neither easy, nor necessary to be determined. When I was young, I was *sure* of everything. In a few years, having been mistaken a thousand times, I was not half so sure of most things as before. At present I am hardly sure of anything, but what God has revealed to me! Upon the whole, an ingenious man may easily flourish on this head. How much more glorious is it for the great God to have created innumerable

* Dialogue, p. 42.

worlds than this little globe only! But, after all, I would ask one plain question: Suppose there are more worlds than sands on the sea-shore, is not the universe finite still? It must be, unless it be God. And if it be finite, it can still bear no proportion to Him that is INFINITE, any more than this ball of earth does. How large soever it be, still, compared to Him, it is as nothing, or the small dust of the balance. Do you ask, then, what is this Spot to the great God? Why, as much as millions of systems. GREAT and LITTLE have place with regard to us; but before Him, they vanish away! Enlarge the bounds of Creation as much as you please, still it is but a drop to the Creator.*

We said, in an early portion of this paper, that after the two questions, Why should there be more worlds than one? and, Why should there not? we should ask a third, on our own account, and of a practical character: *What if there be?* With this we must, however, deal briefly, since our own views have been sufficiently indicated in what has gone before.

We have always doubted whether any one, disquieted by qualms and misgivings concerning the truths of revelation, derived from such astronomical speculations as we have been considering, has really reflected with sufficient depth and reverence upon the character and attributes of God, with reference to his creatures, and the nature of a professed revelation from Him! especially of such a revelation as the Scriptures purport to contain. What do we, too frequently, see in such discussions, but Omnipotence attempted to be measured and limited by impotence—Omniscience by ignorance?—The forbearing Creator, remembering that we are but dust, by his presumptuous creature? Because man cannot himself attend completely to many things at once, and considers that numbers infer equality of claims to notice and importance; So, forsooth, he thinks it must be with the

Almighty; and presumes to suggest to the High and Holy One, inhabiting eternity, what it is likely or unlikely, that he should do with the work of his own hands!

We, ourselves, see no difference between the case of only two bodies, throughout infinitude, like the earth, and one of them selected to be the scene of such an event as the incarnation of the Son of God, as well as those other special dealings revealed in Scripture, and one out of two hundred, two millions, or any conceivable number of other bodies—and that, too, reasoning on the assumption that we know as much about every other body as about that one which we inhabit. But how is the impious absurdity heightened, when, to raise the objection, we jump at the conclusion that there is such a likeness, and snatch at every vestige of possible coincidence, in order to lay the basis of unbelief! Unbelief—of what? Of a professed message from God himself to his creatures, which, if believed, instantly and for ever concludes the whole matter. *Let God be true, though every man a liar:* and we may well stand aghast at the idea of raising such an issue as the truth or falsehood of God. He may, very fearfully, have given us a revelation which he has also left us at liberty to accept, or reject: but he has supplied us with evidence, and the power of judging of it: and is it not barely rational to address our faculties to *that evidence*—its absolute intrinsic claims to our assent? But beyond this, we are to remember that he professes to tell us, that it is not a matter of the head alone, but also of the heart; that *with the heart man believeth unto righteousness*—it is a matter of the will as well as the understanding; and if a man, instead of fastening his startled attention upon the one great subject and question of this life, will choose to set forth on a butterfly tour through infinitude, fluttering round about this and then about the other shining speck in the heavens, in order to impugn the profound truth of God—why, he must settle the matter with his Maker.

* *Wisdom of God in the Worlds of Creation*, vol. iii. p. 265.

It has been well observed by Dr Chalmers, that the object of God's mysterious and merciful message to the earth "is not to convey information to us about the state of the planetary regions. This is not the matter with which it is fraught. It is a message from the throne of God to this rebellious province of His dominions; and the purpose of it is, to reveal the fearful extent of our guilt and of our danger, and to lay before us the overtures of reconciliation. Were a similar message sent from the metropolis of a mighty empire to one of its remote and revolutionary districts, we should not look to it for much information about the state or concerns of the intermediate provinces." Whether or not such a Proclamation may contain any casual reference to other quarters of the Empire, surely the concern of those to whom the document is sent, is with its direct bearing *on themselves*, to whom it professes to be directed: and a temper of insolent distrust, and presumptuous scrutiny, concerning these collateral matters, is the last that befits a reverent and rational being.

The Christian revelation is of a nature to satisfy, by its vastness and profundity, the utmost capacity of which man is conscious, as a moral and intellectual being. The more frequent and deep are his meditations upon it, the more he becomes invested with strength and grandeur of mind and character; the more frequent, solemnising, and elevating will be the internal evidences graciously afforded him, of the adaptation of revelation to his moral nature. Among the countless stars, his eye will be fixed on Him who made them, and who desires to become personally more and more intimately related to him; for religion is verily a personal matter between God and man.

An astronomical unbeliever is really a very poor yet pretentious thing. His little armoury is soon exhausted. His only weapon is—Is it *likely*? If answered, "How can that signify, if the fact be so?" he has no reply to make, but to deny the fact, because—it is not

likely! *Likely*, in the estimation of an insect like himself!

"Newton," says Dr Chalmers, in his Discourse on the Modesty of True Science, "knew the boundary which hemmed him. He knew that he had not thrown one particle of light on the moral or religious history of these planetary regions. He had not ascertained what visits of communication *they* receive, from the God who upholds them; but he knew that the Fact of a Real Visit to This Planet had such evidence to rest upon, that it was not to be disputed by any aerial imagination." This is the true, the culminating point of all these inquiries; and if we negligently or wilfully lose sight of it, we may fearfully, hereafter as well as here, find that *the wisdom of this world was foolishness with God*.

Horace Walpole, that flippant, brilliant trifler, thought differently from Sir Isaac Newton. He said that Fontenelle's book had made him a sceptic: that on the assumption of a plurality of worlds, any revelation was impossible: that the reception of this opinion was sufficient with him to destroy the credibility of all Revelation! He and Thomas Paine were thus, it seems, of one mind on this matter—Sir Isaac Newton of another. Let the noble and devout spirit of Newton, however, be in us; both Faith and Reason assuring us that we stand, in scriptural truth, not *like a foolish man which built his house upon the sand*, but safe and immovable, *like a wise man which built his house upon a rock*.

Surely, sublime is such an attitude, and magnificent the spirit capable of reposing upon the assurance of its Maker, regardless of everything else whatever. It is thus that, as we have already said, the life of the Christian is one long-sustained Act of FAITH. He knows that full light is reserved for hereafter, because he has been expressly told, that here we know but in part. *He* may then wake up out of his self-abasement, amidst scenes of wonder and blessedness, shut out for ever from the dismayed and confuted unbeliever.

Finally, we repeat the question, What if there *be* a plurality of Worlds? Suppose every luminary, great and small, whether Sun, Planet, or Satellite, and in as great numbers as the imagination can conceive, to be the seat of anything that we can deem rational and moral existence: what then? *What is it to us?* Why must we meddle with other worlds, instead of attending to that allotted to ourselves? We could at best but satisfy our curiosity, by discovering inhabitants of other worlds: and could such knowledge be otherwise than a mere disturbing force in the discharge of our duties? Let us be very sure, that had our Maker deemed it conducive to our welfare, or His glory, or consistent with the purpose of His infinite wisdom, to disclose to us that which we are so impotently panting and straining for, He would have done so—but He has not. Why, therefore, should “More Worlds than One,” be either the “hope of the Christian,” or the “creed of the philosopher?” To the former, it is, undoubtedly, open to form innocent conjectures on the subject, even as affecting, possibly, in some way at present inconceivable, his own personal interests hereafter. If he choose, he may “hope” to tenant a star; but it is not “THE hope” of the Christian, because he has no such sufficient ground or warrant as alone he would found a hope upon. And why the “creed” of the philosopher? Had not such language fallen from a veteran in science like Sir David Brewster, we should have been disposed to call such language ridiculous: and echoing his own inapplicable and uncourteous expressions to his opponent, declare that they are “mere sound in the ear, without any sense in the brain.”

Need we remind any one of what is required to constitute an item in a *creed*, and moreover, the creed of a philosopher?

The Christian can dispense with such “hope;” and the philosopher discards the “creed” sought to be foisted upon him.

And finally, we would close this

paper by deprecating the indulgence, by speculators of this class, in unseemly suggestions and suppositions—unseemly up to the point of irreverence and profanity—concerning the nature and extent of that awful item of the Christian’s creed, the Atonement, with reference to a plurality of worlds:—as to whether or not, for instance, all imaginary inhabitants of other worlds have, or have not, need of a Saviour; and whether the efficiency of His incarnation extends to such other extra-terrestrial beings, or is expended upon ourselves. It was with reluctance that we transcribed a passage on this subject from Sir David Brewster; to which we must refer our readers as affording the best evidence of the necessity for these remarks.

NOTE.

At page 486, we remarked “that certain expressions” of the essayist, “had startled ourselves not a little, when reflecting that they related to the possible mode of action of Omniscient Omnipotence; and we should be gratified by seeing them vindicated, or explained, in the next edition of the Essay.”

The distinguished author has responded to this appeal, in the following paragraph in the Preface to the newly-published [October 1854] Third Edition of the Essay. We commend that paragraph to the careful consideration of the reader:—

“Those persons who may have thought that there was too much boldness in some of the author’s expressions;—as when he speaks of ‘wasted means’ in the work of creation, of ‘failure’ in some parts of its plan, of ‘several sketches of which only one has been completed,’ and the like;—will see, I hope, on a further consideration of what is said in the Essay and in the Dialogue, that nothing is involved, in the thought thus expressed, but what is in full harmony with the spirit of reverence which prompts their own sentiment.

Such expressions imply the ignorance and blindness of man ; to whom such thoughts as *waste*, and *failure*, and *incompleteness*, are suggested by his first views of many parts of the world, both moral and physical ; they do not imply any imperfection in the work which God, with a full comprehension of all relations, and foresight of all consequences, is performing, from the beginning to the end of time, space, and causation. Can it surprise us

that we do not fully understand this work ? And can our defect of comprehension take any other form than this, — of a *seeming* failure in some parts ? Can the pious man see plainly how *everything* has its use ? Those who require a palpable use in every part of creation, have been asked, What is the use of the flowers of the field ? and no answer has been given. We *know*, but we do not yet *see*, that all things work together for good."

A FEW PERSONAL RECOLLECTIONS OF CHRISTOPHER NORTH.

ON a bright frosty day in December 1827, as I was quitting the mathematical class in the University of Edinburgh, of which I had been a member about two months, one of my class-fellows said suddenly, "If you want to see Christopher North, he's yonder!" This my companion knew to have been long my desire, for I was in those early days one of Christopher North's most enthusiastic admirers. My curiosity was gratified in a moment. Walking rapidly across the quadrangle towards his class-room (that of Moral Philosophy) with a sort of hasty, impetuous step, as though he were behind his time, was Professor Wilson, then in the very prime of life.* A faded, tattered gown, put on carelessly, fluttered in the keen wind, and seemed a ludicrous appendage to as fine, tall, manly a figure, and free, fearless bearing, as I have ever looked upon. As he came nearer, his limbs and their motions gave the idea of combined strength, agility, and grace; and there was a certain sort of frank, buoyant unaffectedness about his demeanour that seemed to indicate light-hearted consciousness of great mental and physical endowments. When he came near enough for his face to be seen with distinctness, in it I forgot everything else about him; and I shall never forget the impression it produced. What a magnificent head! How finely chiselled his features! What compression of the thin but beautifully formed

lips! What a bright blue flashing

"Eye, like Mars, to threaten or command!"

Add to all this the fair transparent complexion, flowing auburn hair, and the erect commanding set of his head upon his shoulders, and surely no Grecian sculptor could have desired anything beyond it. As for his eye, it lightened on me as he passed, and suddenly disappeared.

I had seen power and genius visibly embodied; and, in a word, I think that never before or since can any celebrated man's personal appearance have so far surpassed an admirer's expectation as Professor Wilson's air, face, and figure went beyond what I had imagined. I say this calmly, after the lapse of twenty-seven years, during which I have a thousand times recalled the scene which I have now faintly sketched for the reader; assuring him that no one then knowing this gifted and far-famed man, will think my sketch too highly coloured.

As I heard that many more were crowding into his class-room than were entitled to do so, I followed their example, discarding from my thoughts for the nonce all poor Professor Wallace's sines, co-sines, triangles, and parallelopipeds; and when I entered the Moral Philosophy class, I found that Professor Wilson had just begun his lecture. He read it with considerable rapidity, as it were vehemently urging his words out of lips compressed with the natural energy of his character. Professor Sedgwick, of Cam-

* He was in his forty-third year.

bridge, when speaking in public, has sometimes reminded me of Professor Wilson's manner.

The lecture was eloquent, and greatly relished by the auditory. A small incident showed how he was absorbed with his subject, though the lecture was probably one that he had often read to his class. He had taken out his pocket-handkerchief, and after drawing it across his forehead, crushed it up, and placed it on the left-hand side of his paper, partly under a book. By-and-by, he required his handkerchief, and felt first in one pocket, then in the other; then in his breast, then glanced hastily round, evidently in quest of his handkerchief, but without pausing for a moment in the flow of his impassioned rhetoric. These efforts he renewed several times; but it was not till he had finished his lecture that he suddenly saw what he had been looking for, and which we had seen all the while. He uttered a loud "Oh!" as he thrust it into his pocket, and withdrew. I have several times reminded him of this little circumstance, and he always laughed heartily, saying, "Very likely—very probably. I'm very thoughtless about such things." All I recollect of his lecture was, that it dealt much with Plato; but I was completely occupied with Wilson, feeling that I could pay my respects to Plato at any time. I am bound to say, that this distinguished man did not favourably impress me as a Lecturer on Moral Philosophy; inasmuch as he seemed to lack that calm, didactic manner, alone befitting the treatment of difficult, profound, abstract subjects. I think those who frequented his class must have found it difficult to realise what they had heard from him. I do not indeed recollect seeing any one taking notes; but I do recollect thinking one or two passages in his lecture very fine.

I did not see Professor Wilson again, except perhaps casually, and at a distance, till a few days before I quitted Edinburgh, in the autumn of 1828. I had had no opportunity of meeting

him in society; and resolved not to leave Scotland without being able to say that I had spoken to Professor Wilson. But how was this to be done? Having been informed that he had concurred with Professor Pillans in awarding to me the prize for English poetry,* I thought, after many qualms and misgivings, that an allusion to that circumstance might, to a generous man of genius, serve to take off the edge of the liberty I proposed to myself, of calling, as a student quitting the university, to pay my parting respects to one of the Professors. So, one afternoon, after walking hesitatingly up and down the street in which he lived, and other adjoining ones, I summoned up spirit enough to call at his house, and inquire if he were at home. The answer was, yes; and on being asked my name, I mentioned it, adding, "a student in the university." In a moment or two's time the servant returned, saying, "The Professor would see me." Somewhat nervously I followed, and in a moment found myself, if I am not mistaken, in his library. The room had a disordered appearance, as if its occupant were careless. He had a loose wrapper round him, his shirt collar was thrown open, and he seemed writing. "Pray take a seat," said he, addressing me by name, and then his piercing eyes were fixed on me with what I thought a slightly impatient curiosity. "I feel, sir, that I have taken a great liberty," I began; "but I am an English student, with very few friends in Scotland, and before leaving the university and Scotland, I felt anxious to have the honour of paying my parting respects to you." "Oh, well, I am much obliged to you. So you are leaving the university? Are you the Mr Warren that gained the prize for English verse?" I told him I was; on which his whole manner altered, and became exceedingly cordial and gracious, and his smile was fascinating. "Well," said he "as you are an Englishman at a Scotch university, I was a Scotchman at an

* *The Martyr Patriots*, note, p. 431.

English university—at Oxford ;” and he talked with animation on the topic. I explained that the reason why I could not attend his, among other classes, was that I wished to enter at an inn of court immediately. “Oh, pho!” said he, laughing good-humouredly, “you have not lost much by missing *my* lectures! You must read for yourself on these subjects.” After some other conversation, I happened to say — “There is only one other person besides yourself, sir, whom I should have liked to see before returning to England.” “Who’s that?” he asked. “Mr De Quincey, the ‘Opium Eater.’” “Mr De Quincey! Why, he’s staying with me now! Well, I dare say I can manage that for you. Come in to-morrow evening about nine o’clock, and I’ll introduce you to him. I shall be most happy to see you!” He said this with so much kindness, that I accepted the invitation; and after he had shaken my hand with much friendship of manner, I withdrew, he instantly resuming his pen.

On making my appearance next evening, at the appointed hour, I was at once shown into the drawing-room, where were Mrs Wilson, evidently a very amiable and kindly woman, and some of her children. In about ten minutes’ time Professor Wilson made his appearance, with one or two other gentlemen, to whom he was talking very energetically. He presently saw me, and shook hands with me cordially. “Oh, you want to see Mr De Quincey!—Come here!” and leading me into the back-room, towards a door which stood open, in the angle formed by it with the wall stood a little slight man, dressed in black, pale, care-worn, and with a very high forehead. “Mr De Quincey, this is a young friend of mine—a student in the university, returning to England.” After a few words of course, he left us; but Mr De Quincey seemed exceedingly languid. He spoke courteously, though evidently disinclined to talk. Shortly before we went down to supper, Pro-

fessor Wilson said, “You shall sit opposite to Mr De Quincey” — and I think he added in a whisper and with a smile, “it will be a queer kind of *wine* that you will see him drinking!” Presently we went down to supper. Nothing could exceed the gentle unaffected kindness to me of Mrs Wilson, whom I never saw again after that evening. I saw her watching me once or twice with a good-natured amused smile, as she saw me intent upon Mr De Quincey, and his doings! I cannot at this distance of time pretend to say that his small decanter contained coffee: assuredly it was not wine, but exactly resembled laudanum. He was taciturn for some time, but gradually fell into conversation, in which Professor Wilson joined with vivacity. It was on some metaphysical subject; and at length I well recollect that the discussion turned on the nature of *Forgetfulness*. “Is such a thing as *forgetting* possible to the human mind?” asked Mr De Quincey—“Does the mind ever actually lose anything for ever? Is not every impression it has once received, reproducible? How often a thing is suddenly recollected that had happened many, many years before, but never been thought of since till that moment!—Possibly a suddenly-developed power of recollecting every act of a man’s life may constitute the Great Book to be opened before him in the judgment day.” I think this is the substance of what was said on the subject, Professor Wilson making several curious remarks as to the nature of mind, memory, and suggestion. I ventured to say—and it was the only thing I did venture to say—that I knew an instance of a gentleman who in hastily jumping from on board the *Excellent*, to catch a boat that was starting for shore, missed it, and fell into the water of Portsmouth harbour, sinking to a great depth. For a while he was supposed drowned. He afterwards said, that all he remembered after plunging into the water was a sense

of freedom from pain, and a sudden recollection of all his past life, especially of guilty actions that he had long forgotten. Professor Wilson said that if this were so, it was indeed very startling: and I think Mr De Quincey said that he also had heard of one, if not two or three such cases.

I was so absorbed with watching and listening to the conversation of Professor Wilson and Mr De Quincey, that I left almost supperless, in spite of the kindly pressure of Mrs Wilson. I often saw her look, as I fancied, with fond interest at her famous husband, whose demeanour had a noble simplicity. His eyes sometimes seemed to glitter and flash with the irrepressible fire of genius. I watched him with lynx-like vigilance; but all was spontaneous and genuine: not a vestige of artifice, affectation, or display: no silly "inflicting his eye on you:" but all, whether grave or frolicsome, the exuberance of a gloriously-gifted man of genius. And see how hospitable and kind he was to a young English stranger, whom he had never seen till the preceding day! Before I left, he asked me much about my intentions and prospects; wished me heartily well: and when, about eleven o'clock, I had shaken hands with him and got into the street, the sun of GENIUS no longer shone on me, and I felt dull, and indeed in the dark. As I walked home, I thought myself a poor pigmy, that had just been entertained by a good-humoured giant!

I never saw any man who *looked* the man of genius he was, but Professor Wilson. Next to him was Sir Walter Scott. Him I first saw, in his fifty-seventh year, when I was at college in Edinburgh, and had wandered one day, in, I think, the month of June, into one of the law courts to hear Mr Jeffrey plead. The latter's face, let me say in passing, appeared to me that of an acute, refined, sensitive, and somewhat irritable man, but

not indicative of power. I had been standing for some time in the Court of Session, in which Sir Walter Scott was one of the principal clerks, who sate at a table below the judges, when my eye fell upon an elderly man, one of those sitting at the table, wearing a rusty-looking old stuff gown. His chin rested on his left hand, and his right hung by his side with a pen in it. Without having an idea who he was, my attention was soon arrested by his lofty forehead, and a pair of eyes that seemed gazing dreamily into a distant world unseen by any but himself. The more I looked at those eyes, the more remarkable appeared their character and expression: not bright, or penetrating, but invested with a grand, rapt, profound air. He sate motionless as a statue, apparently lost to all that was passing around him. A sudden suspicion arose within me that I was looking on the mighty Northern novelist, who had publicly avowed himself the author of *Waverley* in the preceding February. To make assurance doubly sure, I asked a person standing beside me, who that was, indicating him. "Whaur d'ye come frae?" said he, looking at me rather contemptuously; "d'ye no ken that's *Sir Walter*?" Almost while this was being said, Sir Walter Scott seemed to rouse himself from a reverie, and soon afterwards wrote rapidly on several sheets of paper, and then quitted the court, leaning on his stick, and walking very lame.

Professor Wilson's noble countenance indicated, to even an ordinary observer, the impulsive energy of his character, daring and generous,—also acuteness, refinement, and power; one, in short, to fear, to admire, and to love. Everything petty and mean he spurned with a scorn that was magnificent; to obscure and timid genius, he extended, with tender kindness, the hand of, as it were, the King of Letters. To pretenders, however, of all sorts, he was utterly merciless: to them, the crutch of Christopher was annihilation. It was fine to hear him

talk on such a subject: his eye, his lip, his voice, his gesture, all in fierce and vivid accord.

As an instance of his watchfulness of literary merit, when newly manifested, I recollect his once saying to me, "By the way, do you know any one in the Temple—a special pleader, or something of that kind, called Moile—Nicholas Thirning Moile?"* I told him that I had never heard of the name: on which he pressed me much, and said, "Try to find out, then, for he is a very clever fellow. He has just published a sort of poetical version of two or three of the State Trials, which I have read, and formed a high opinion of them. Some parts are beautiful—he's a man of genius. I shall review the book in the Magazine;" and his opinion of the performance may be seen in No. 288.

Professor Wilson read with prodigious rapidity, and it was an *exhaustive* reading: he gathered the purpose, scope, and character of a work, on even a difficult subject, at almost a glance. Instances of this have come under my personal knowledge: and I know the pages in "Blackwood's Magazine" which attest Christopher North's marvellous rapidity and accuracy of critical judgment. As a critic, his perceptions were exquisite, and his resources boundless. He could put a new or an old idea into a sort of kaleidoscopic variety of striking and novel aspects, and with a charming facility. He could bring out a meaning often more distinctly and happily than his author himself. His rich, comprehensive, and penetrating criticism shed new splendour over Homer, Shakespeare, Spenser, Milton, Dryden, and whomsoever else he willed to set before his own and his reader's eye.

One of his most distinguished con-

* It turned out that the name of "Nicholas Thirning Moile" was assumed by a friend of my own, now an eminent Queen's Counsel: who had sent to me the very volume in question in his assumed name; and, after glancing at it for a moment, I acknowledged the receipt of the book to the publisher, but soon afterwards lost sight of it. It was only a few months ago that I discovered the author.

temporaries, not apt to bestow eulogy lavishly or unworthily,—I mean Mr Hallam,—in his "Introduction to the Literature of Europe," while sketching the character of Spenser, thus alludes to a fine series of papers by Professor Wilson on the "Fairy Queen:"—"It has been justly observed by a living writer, of the most ardent and enthusiastic genius, whose eloquence is as the rush of mighty waters, and has left it for others, almost as invidious, to praise in terms of less rapture, as to censure what he has borne along in the stream of unhesitating eulogy, 'that no poet has ever had a more exquisite sense of the beautiful than Spenser:'" adding, in a note, "I allude here to a very brilliant series of papers on the 'Fairy Queen,' published in 'Blackwood's Magazine,' during the years 1834 and 1835." I think the observation which the Professor makes concerning Spenser, may be well applied to the gifted critic himself. I fear, however, that I am wandering too far from the object of this humble tribute to the memory of Professor Wilson.

I never heard him speak in disparaging terms of any of his contemporaries; but how tremendous, in his earlier years, were his flagellations of those whom he considered deserving of them as literary offenders, is known to all well-informed literary readers. I have conversed with him much about literary men, and often admired his forbearing and generous spirit.

Shortly after Mr Dickens had so suddenly eclipsed in popularity all his contemporaries, Professor Wilson spoke to me of him in terms of high admiration, as a man of undoubted and great genius; and he spoke of "*Nelly*" as a beautiful creation.

Professor Wilson told me that there were two things he specially hated—letter-writing, and being "made a lion of," or, as I recollect him saying contemptuously, "a lionet." As for letter-writing, I never received from him but one in my life; and that was written on half a sheet of paper, evidently the

blank sheet of some old letter. Mentioning a late accomplished dignitary of the Church, he said laughingly, "—— will continue writing to me, though I never answer his letters, nor will!" One those letters happened to contain a friendly allusion to myself, and he sent it to me through a common friend, thinking it would please me.

He never called on me in the Temple but once; and then sate a long time, asking a multitude of questions about the Temple,—its history, the nature of chamber life, &c. &c., with lively interest; almost suggesting that he might be thinking of writing something on the subject.

He used to be a daily visitor at Messrs Blackwood's saloon,* in George Street, to chat with them and one or two other friends, read the newspapers, and skim over the magazines, reviews, and new publications. He was much attached to all the Blackwoods, giving them many proofs of his zealous and affectionate good-will. How pleasantly have I chatted with him in that saloon! How fresh and genial he always was! How sly his humour! How playfully his eye glittered while he was good-humouredly making fun of you! How racy his comments on literary and political topics! How ready and correct his knowledge in all kinds of subjects, even while he professed "to know very little about them!"

I saw him last in that saloon, towards the close of September 1851. I had been for ten days in Edinburgh, superintending—as that was the long vacation—a work which was on the eve of publication, and had lived quite secluded all the time. In passing hastily through the saloon with some proofs in my hand, I came upon Professor Wilson, sitting there as usual; but I had not seen him for several years. He had become a great deal stouter than I had ever seen him be-

fore; he was also aged much; but his face was as fine, his eye as bright, and his manner as delightful as ever. He did not, however, speak with his former energy. "They tell me," said he, laughing good-humouredly, "that you've quite buried yourself since you have been here! What have you been about?" I told him. "Ay—it's a capital title, and promises well. You have set us all gaping to know what we're to have! Tell me what it's about—I'm anxious to hear. What's your *idea*?" I told him, as briefly as I could. "Let me hear some of it," said he, after I had given him my notions of the scope of the work; and I read him, at his desire, a considerable portion. How I recollect his full, keen eyes, watchfully fixed upon me as I read!

The next, and last time I saw him, was also the last time that he left his own house. During the intervening years, he had had a paralytic seizure, which affected his powers of motion and speech, and to some extent his mental faculties. He had driven up to Mr Blackwood's door, accompanied by a fond daughter, for the purpose of congratulating one in whom he had always felt deep interest, on his approaching marriage. I was in the saloon at the time; but on being told that he would be pleased to see me, though he was feeble and could not converse, I went to the carriage door. Shall I ever forget father and daughter,† as they sate opposite to each other, she eyeing her gifted but afflicted father with such tender anxiety! Never! His hat was off, and his countenance, on which fell the rays of setting sunlight, was fine as ever; his *eye was not dim*, nor did his *natural force seem abated*, as he sate, and looked at me, and stretched forth his hand; but when he attempted to speak, alas! it was in words few, indistinct, and unintelligible. To me it was an affecting moment—but a moment; for he was not allowed to become excited. Again he shook my hand; and I had looked my last on Professor Wilson.

† Mrs Gordon.

* This is a spacious room dedicated by Messrs Blackwood to the use of their friends, where are lying numerous newspapers and magazines; and ornamented with busts and pictures of their distinguished literary men.

The next I heard of him, was his peaceful death ; and then a burial befitting one of the great men of Scotland.

I am almost ashamed to commit to the press this sudden and spontaneous, but poor tribute to the memory of such a man of genius and goodness. I am altogether unequal to the task

of his intellectual portraiture ; but what I have written is true, and comes from my heart ; wherefore I hope it will be accepted in the spirit in which it is offered.

Adieu, Christopher North ! Adieu, John Wilson !

SAMUEL WARREN.

THE END.

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